

BOARD MEETING  
STATE OF CALIFORNIA  
THE RESOURCES AGENCY  
CENTRAL VALLEY FLOOD PROTECTION BOARD  
OPEN SESSION

RESOURCES BUILDING  
1416 NINTH STREET  
AUDITORIUM  
SACRAMENTO, CALIFORNIA

FRIDAY, AUGUST 15, 2008

8:39 A.M.

JAMES F. PETERS, CSR, RPR  
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

BOARD MEMBERS

Mr. Benjamin Carter, President

Mr. Butch Hodgkins, Vice President

Ms. Lady Bug Doherty, Secretary

Mr. John Brown

Ms. Teri Rie

Ms. Emma Suarez

STAFF

Mr. Jay Punia, Executive Officer

Mr. Eric Butler, Senior Engineer

Ms. Virginia Cahill, Legal Counsel

Mr. Dan Fua, Supervising Engineer

Mr. Gary Hester, Chief Engineer

Ms. Lorraine Pendlebury, Staff Analyst

Mr. Geoffrey Shumway, Staff Analyst

DEPARTMENT OF WATER RESOURCES

Ms. Annalena Bronson

Mr. Kris Brown

Mr. Steve Dawson

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APPEARANCES CONTINUED

DEPARTMENT OF WATER RESOURCES

Ms. Nancy Finch, Staff Counsel

Mr. Eric Koch

Mr. Ricardo Pineda, Chief, Floodplain Management Branch

Mr. George Qualley, Chief, Division of Flood Management

Mr. Ward Tabor, Staff Counsel

Mr. John Yago, Chief, Floodway Protection Section

ALSO PRESENT

Mr. Tad Alexander, River Partners

Mr. John Bassett, Sacramento Area Flood Control Agency

Mr. Michael Bessette, City of West Sacramento

Mr. Paul Brunner, Three Rivers Levee Improvement Authority

Mr. Paul Devereaux, Reclamation District 1000

Mr. Eric Nagy, HDR Engineering

Mr. Jim Sandner, United States Army Corps of Engineers

Mr. Kathy Schaefer, Federal Emergency Management Agency,  
Region 9

Mr. Scott Shapiro

Mr. Steve Winkler, San Joaquin County Public Works

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1 PROCEEDINGS

2 PRESIDENT CARTER: Good morning, ladies and  
3 gentlemen. Welcome to the Central Valley Flood Protection  
4 Board meeting here.

5 Let the record reflect that the Board did meet  
6 yesterday as part of a tour as agendized for the meeting  
7 yesterday. We toured portions of Yolo County; Cache  
8 Creek, two sites where setback levees were being proposed  
9 on Cache Creek; also, the Yolo County wildlife area in the  
10 Yolo Bypass. And then we had a tour of West Sacramento  
11 sites that will be coming before the Board. Actually  
12 one's before the Board today and then future items. So we  
13 did that yesterday.

14 Mr. Punia, if you would please call the roll.

15 EXECUTIVE OFFICER PUNIA: Jay Punia, Executive  
16 Officer of the Central Valley Flood Protection Board.  
17 Except Board Member Rose Marie and Board Member Teri Rie,  
18 the rest of the members are here.

19 PRESIDENT CARTER: Okay. Thank you very much.

20 At this time, we'll entertain a motion on  
21 approval of minutes for the May 30, 2008, Subcommittee and  
22 the June 20, 2008, meeting.

23 BOARD MEMBER BROWN: I so move, Mr. Chairman.

24 PRESIDENT CARTER: We have a motion.

25 Is there a second?

1           SECRETARY DOHERTY: Are you going to -- is that  
2 motion just for the May 30th?

3           BOARD MEMBER BROWN: No, that's both of them.

4           PRESIDENT CARTER: Do we have a second?

5           VICE-PRESIDENT HODGKINS: I'll second.

6           PRESIDENT CARTER: Okay. We have a second.

7           Is there some discussion?

8           SECRETARY DOHERTY: Yes. I think that we need to  
9 clean up the June 20th minutes, specifically where the  
10 motion was tabled to -- on page 8, at the top of the page,  
11 second paragraph.

12           Well, after tabling the motion there was quite a  
13 bit of discussion there. And we took some liberties and  
14 left some of the information out. And I think that Ben  
15 has got it corrected to the point where if we insert his  
16 memo into this, then we could go ahead and approve the  
17 motion.

18           PRESIDENT CARTER: The issue here is that -- I  
19 don't know that the minutes that were included in the  
20 package captured the flavor and the concerns of the Board  
21 with regard to the proposed vegetation plantings for that  
22 PL 84-99 project and the apparent inconsistency of the  
23 project design in relation to those plantings and the  
24 Corps's levee vegetation standards. And as you recall,  
25 Member Rie's motion to table the consideration of the

1 application in favor of trying to find out more  
2 information over the lunch recess from the Corps about  
3 what kinds of plantings they were proposing and whether or  
4 not they were consistent or inconsistent. And then in a  
5 subsequent meeting, Jim Sandner from the Corps came to the  
6 Board and addressed the Board on some of the vegetation  
7 standards.

8           So I have some language here. It's not very  
9 polished. We can do that. Or we can perhaps approve the  
10 May 30 minutes and then bring the June 20th minutes back  
11 when we have corrected them and you've had a chance to  
12 look at that.

13           What's your pleasure?

14           SECRETARY DOHERTY: Well, you've got a motion on  
15 the floor now that's included both.

16           PRESIDENT CARTER: Right.

17           BOARD MEMBER BROWN: I'll rescind that motion,  
18 Mr. Chairman, and make a new one that we approve the June  
19 30th minutes.

20           PRESIDENT CARTER: For the May 30th minutes?

21           BOARD MEMBER BROWN: I mean May 30th as  
22 presented.

23           PRESIDENT CARTER: Okay.

24           VICE-PRESIDENT HODGKINS: I'll rescind my  
25 original second and second the new motion.



1           PRESIDENT CARTER:   Okay.   Very good.

2           We have a motion and a second to approve the May  
3 30th Subcommittee minutes and tour information.

4           Any further discussion?

5           All those in favor indicate by saying aye.

6           (Ayes.)

7           PRESIDENT CARTER:   And opposed?

8           The motion carries unanimously.

9           And then we will bring the June 20th minutes back  
10 after they're corrected.

11           SECRETARY DOHERTY:   And if you want to look at  
12 the transcript, I think it's on page 120 of the transcript  
13 where this discussion takes place.

14           PRESIDENT CARTER:   Which is on the website.

15           Okay.   Very good.   We'll do that.

16           At this time, we want to go through and approve  
17 the agenda for today's meeting.   It's Item 3.

18           Are there any proposed changes to the agenda for  
19 today?

20           Mr. Punia.

21           EXECUTIVE OFFICER PUNIA:   Staff recommends that  
22 Item 8B be removed from the agenda for a future meeting.  
23 Staff needs a little bit more review of the application  
24 before they can recommend this project to be approved.

25           That's the only change in the agenda from the

1 staff.

2 PRESIDENT CARTER: Any other suggested changes to  
3 the agenda for today?

4 SECRETARY DOHERTY: I make a motion to approve  
5 the agenda as presented with 8B removed.

6 PRESIDENT CARTER: Okay. We have a motion.  
7 Is there a second?

8 BOARD MEMBER BROWN: Second.

9 PRESIDENT CARTER: Motion and a second.  
10 Any discussion?

11 Okay. All those in favor indicate by saying aye.  
12 (Ayes.)

13 PRESIDENT CARTER: And opposed?  
14 The motion carries unanimously.  
15 Very good.

16 At this time, we have time for the public to  
17 address the Board. And we invite members of the public to  
18 address the Board. And we ask that the public address the  
19 Board on unagendized items under this particular item. So  
20 if you want to address the Board on items that are not on  
21 the agenda today, please do so now. If you wish to  
22 address the Board on items that are agendized, we invite  
23 you to do that when the item comes before the Board during  
24 today's meeting.

25 I do not -- and we also ask if you would fill

1 out -- there are little 3-by-5 cards at the entrance to  
2 the auditorium and I think also here on the front desk.  
3 Those are so that we can be sure and recognize you when  
4 you want to speak. So if you wish to address the Board,  
5 please fill those out. And I do not have any of those.

6 Is there any member of the public out there that  
7 does wish to address the Board at this time on unagendized  
8 items?

9 Okay. We have no public comment.

10 We'll move on to Item 5. This is a hearing.  
11 It's on Application No. 18336, West Sacramento Area Flood  
12 Control Agency, I Street Bridge - South Levee Project in  
13 Yolo County.

14 I will go ahead and call the hearing to order.  
15 And at this point we'll hear from Board staff on their  
16 presentation.

17 Good morning, Mr. Fua.

18 SUPERVISING ENGINEER FUA: Good morning, and  
19 thank you, President Carter and members of the Board. For  
20 the record, my name is Dan Fua. I'm the Board Staff  
21 Engineer.

22 (Thereupon an overhead presentation was

23 Presented as follows.)

24 SUPERVISING ENGINEER FUA: Before I proceed with  
25 my presentation, I would like to make sure that you get a

1 copy of the draft cooperation agreement between the Board  
2 and West Sacramento Flood Control Agency that was not part  
3 of your original packet.

4 I am here today to ask the Board to consider  
5 approval of Permit No. 18336 to alter a portion of the  
6 Sacramento River Flood Control Project west bank levee in  
7 West Sacramento.

8 The proposed project would be construction of a  
9 cutoff wall in order to strengthen that portion of the  
10 levee. As such, the West Sacramento Flood Control Agency  
11 will need a permit from the Board and also an approval  
12 from the U.S. Army Corps of Engineers.

13 The Section 408 letter that you approved at the  
14 last March 21 Board meeting was sent to the Corps, and we  
15 are awaiting a response from the Corps on that letter.

16 --o0o--

17 SUPERVISING ENGINEER FUA: Cursory view of the  
18 levee system of the City of West Sacramento. I know  
19 you've been there yesterday. But, anyway, this is the  
20 vicinity map of the City of West Sacramento delineating  
21 the levee system.

22 The Sacramento River -- the majority of the  
23 levees that protects the City of West Sacramento is part  
24 of the Sacramento River Flood Control Project. This  
25 levee -- the west north levee, the west south levee, the

1 Sacramento bypass, the Yolo bypass, and the deep water  
2 channel east levees are project levees. The rest are part  
3 of the navigational levees - the port north levee, the  
4 port south levee, and the deep water ship channel west  
5 levee. The south cross levee is a private levee.

6           This is the location of the proposed project.  
7 The agency is currently conducting a levee evaluation  
8 project to evaluate the level of flood protection. The  
9 West Sacramento Area Flood Control Agency has completed a  
10 problem identification report and it is currently  
11 formulating alternative strategies for repair of  
12 deficiencies identified in the report to bring the levee  
13 system level of protection to 200-year-flood event.

14           Also, the West Sacramento -- the overall levee  
15 improvement program also includes identification of  
16 candidate size for early implementation. And the I Street  
17 Bridge Project was selected as one of those projects for  
18 early implementation based on assessment -- overall  
19 assessment criteria based on cost of the project,  
20 environmental impacts and cultural impacts, permit  
21 requirements, and other criteria. And based on the  
22 evaluation of this criteria, the West Sacramento I Street  
23 Bridge Project south side was selected as one of the  
24 projects for early implementation.

25                               --o0o--

11           The cutoff wall, the mitigation -- the cutoff  
12 wall project is designed to mitigate the seepage and the  
13 stability deficiencies. The freeboard and erosion  
14 deficiencies will be addressed as a part of a separate  
15 future levee upgrade project.

17 SUPERVISING ENGINEER FUA: After evaluating a  
18 number of alternatives, the agency selected the cutoff  
19 wall project to mitigate the deficiencies.

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1 slope. And therefore there is no slope modification  
2 required in this project.

3 The cutoff wall extends to about 37 feet, tying  
4 into a sandy silt and lean clay blanket layer. The cutoff  
5 wall adequately mitigates the through-seepage deficiency.  
6 And based on a modeling for seepage analysis, it was also  
7 adequate to bring the exit gradient for underseepage to  
8 the Corps criteria, actually from .48 to .4. And this is  
9 based on the water surface elevation of the 200-year plus  
10 3 feet.

11 Also, the cutoff wall increased the safety factor  
12 for the stability. The levee is deficient in the steady  
13 state stability case factor of safety. But with a cutoff  
14 wall, they're able to increase the safety factor to 1.4.  
15 The Corps criteria is 1.2.

16 --o0o--

17 SUPERVISING ENGINEER FUA: This is a typical  
18 cutoff wall section of the proposed project. Again, the  
19 cutoff wall is about 37 feet deep, it's about 3 feet wide.  
20 And it is constructed by first degrading the levee to  
21 about one-third of the levee height - and in this case  
22 it's about 3 feet - and then excavating the trans-wall  
23 after which the soil-bentonite slurry wall is introduced  
24 and then capped after it's cured. Then the degraded levee  
25 is constructed back to its original condition.

1 --o0o--

2 SUPERVISING ENGINEER FUA: The West Sacramento  
3 Area Flood Control Agency conducted an initial study for  
4 this project. And the initial study determined that there  
5 were some potentially significant impacts for this  
6 project. The design of the project incorporates  
7 mitigation measures to bring the significant impacts down  
8 to insignificant levels. And with that they produce a  
9 mitigated negative declaration containing the mitigation  
10 measures that are needed to mitigate the potentially  
11 significant impacts. The agency filed a Notice of  
12 Determination with Yolo County Clerk's Office and the  
13 State Clearinghouse in December 2007.

14 Board staff had made its own independent review  
15 of the initial study and the mitigation measures that the  
16 agency proposed. And our findings based on the review is  
17 that the mitigation measures incorporated in the project  
18 will reduce potentially significant impacts to less than  
19 significant.

20 --o0o--

21 SUPERVISING ENGINEER FUA: Staff has also  
22 evaluated the proposed project as required by Section  
23 8610.5(c) of the Water Code.

24 Admission of record. Staff recommends to the  
25 Board that before deciding on this application, the Board



1 must consider evidence submitted before you including my  
2 staff report, the permit application and the attachments,  
3 and all other evidence that may be presented before you by  
4 the City of West Sacramento, West SAFCA, any group or any  
5 individual.

6           They use the best available science. Staff  
7 believes that the agency has used the best available  
8 science and technology in identifying the deficiencies of  
9 the levees, evaluating the alternatives, and selecting the  
10 measures to mitigate the deficiencies identified.

11           Effects on the State Plan of Flood Control. This  
12 project does not include changing levee alignment,  
13 increasing the height, or changing the geometry of the  
14 existing levee. With no changes to the channel  
15 cross-section there will be no change to the system  
16 hydraulics. Therefore, no change to the water surface  
17 elevation upstream and downstream of the project site is  
18 anticipated.

19           In addition, the project is small and is  
20 consistent with other improvements in the left bank of the  
21 river within the project vicinity and other upstream  
22 improvements.

23           Staff therefore concludes that this project will  
24 not have an effect on the State Plan of Flood Control.

25           Regarding the effects of reasonable projected

1 events based on the reasons that I mentioned earlier under  
2 the effects on the State plan of flood control, staff  
3 believes that the project will not have an effect.

4 --o0o--

5 SUPERVISING ENGINEER FUA: Lastly, as I mentioned  
6 earlier, we have a draft cooperation agreement between the  
7 Board and the West Sacramento Area Flood Control Agency.  
8 In essentially this cooperation agreement is to assign  
9 obligations between the agency and the Board. And also  
10 this is a written -- this will serve as a written  
11 assurance by the agency to indemnify the state and the  
12 Board and the U.S. Government.

13 --o0o--

14 SUPERVISING ENGINEER FUA: So with that, staff  
15 recommendation to the Board is to approve the Permit No.  
16 18336, adopt the CEQA findings, and direct staff to file a  
17 Notice of Determination and to delegate the authority to  
18 the Executive Officer to complete and sign the cooperation  
19 agreement between the agency and the Board.

20 That concludes my presentation. And I'm willing  
21 to answer any questions that you may have.

22 PRESIDENT CARTER: Are there any questions for  
23 Mr. Fua?

24 Okay. At this time we'll invite public  
25 testimony. And board members may ask questions at any

1 time.

2 But first we'll hear from the applicant. Does  
3 the applicant wish to address the Board on the  
4 application?

5 SECRETARY DOHERTY: Mr. Chairman, may I interrupt  
6 you for a moment.

7 Would you please make a note that Ms. Rie has  
8 arrived.

9 PRESIDENT CARTER: Oh, I'm sorry.

10 Let the record reflect that Ms. Rie joined us at  
11 8:50 this morning.

12 MR. SHAPIRO: Good morning, Board members. My  
13 name is Scott Shapiro. I'm co-program manager for the  
14 West Sacramento Area Flood Control Agency Levee  
15 Improvement Program.

16 First of all, we appreciate the Board hearing  
17 this item, especially at this early hour, and  
18 accommodating our schedule.

19 We really have nothing to add to Mr. Fua's  
20 presentation. We appreciate staff's review of the project  
21 and support of the project. We understand that the  
22 cooperation agreement is in its near final form and  
23 believe that counsel for the Board and counsel for the  
24 agency can work out the final details. And then subject  
25 to agreement of those two counsel, Mr. Punia would have

1 the ability under this suggestion to approve the final  
2 cooperation agreement, and we appreciate that.

3 And we're available to answer any questions you  
4 may have.

5 PRESIDENT CARTER: Any questions for the  
6 applicant?

7 VICE-PRESIDENT HODGKINS: I actually have a  
8 question that's really for the City of West Sacramento.

9 MR. SHAPIRO: We have the City of West Sacramento  
10 here.

11 VICE-PRESIDENT HODGKINS: That's great.

12 MR. BESSETTE: Good morning, Mr. President,  
13 members of the Board. I'm Michael Bessette with the City  
14 of West Sacramento.

15 VICE-PRESIDENT HODGKINS: Hi, Michael.

16 I'm concerned based on some articles I've read in  
17 the Bee lately that we have a disconnect between  
18 floodplain and floodplain management policy and our goals  
19 of providing the most rapid possible improvement of the  
20 flood protection system. And I think it would be  
21 inappropriate for the Board or for me to try and get the  
22 flood control agencies to address this, because it's  
23 really a land-use issue and they don't have that  
24 authority. And having worked for one, I know that if you  
25 begin to intrude upon the authority of a city or a county

1 on land use, you're quickly told to butt out.

2           So here's the question. And really there's  
3 several. I read in the Bee that you are getting a PAL.  
4 Can you tell me whether or not the City of West Sacramento  
5 is about to receive provisional accreditation of their  
6 levees?

7           MR. BESSETTE: FEMA has offered the city a PAL,  
8 and we're in the process of consideration of that offer.

9           VICE-PRESIDENT HODGKINS: I may be incorrect, and  
10 I would certainly allow you to correct me, but hasn't the  
11 city and the flood control agency determined and reached  
12 the conclusion that you do not have 100-year flood  
13 protection?

14           MR. BESSETTE: We haven't reached that  
15 conclusion. What we have determined is that we're  
16 analyzing our levees and we're trying to determine the  
17 actual level of protection that we have. The PAL offer  
18 from FEMA clearly states that they understand through our  
19 analysis and the state's analysis that we have  
20 underseepage problems. And what they're offering us in  
21 our minds is an opportunity to investigate our levees with  
22 a little bit more time so that we can fully understand  
23 what our level of protection is.

24           VICE-PRESIDENT HODGKINS: So I guess my next  
25 question is, right now the City of West Sacramento has no

1 restrictions on building permits because of flood issues?

2 Or is that an incorrect statement?

3 MR. BESSETTE: That is an incorrect statement.

4 We do have restrictions on building. We require -- and I  
5 have a few notes here in that regard. We do require that  
6 residential development entitlements have flood insurance.  
7 That's one requirement. We're also -- we're partnering  
8 with FEMA and DWR to enhance our regulations on  
9 development. We're looking at putting restrictions on the  
10 number of building permits, the location of building  
11 permits. We're implementing land-use regulations to  
12 protect existing levees in the areas around those levee so  
13 that we don't restrict any future flood protection  
14 efforts. And we're looking at -- we have a flood  
15 ordinance that requires any development to demonstrate  
16 they have 200-year flood protection or pay an in-lieu fee  
17 to help the city provide that flood protection.

18 So we have -- and we're also incorporating a lot  
19 of these restrictions into our general plan update.

20 So we're looking at controlled growth, especially  
21 in light of the situation we have with our levee  
22 investigations. And we're looking for future guidance  
23 from FEMA and DWR so that we can further restrict that  
24 type of growth.

25 VICE-PRESIDENT HODGKINS: Okay. But for right

1 now building permits will be issued?

2 MR. BESSETTE: Building permits will be evaluated  
3 on a case-by-case basis depending on where they're at in  
4 the city. We have areas of high ground. We have areas of  
5 in-fill. We have areas of deep flooding. And we have  
6 identified those areas within the city. So we'll evaluate  
7 each permit application on a case-by-case basis.

8 VICE-PRESIDENT HODGKINS: Okay. For the other  
9 members of the Board, I think -- and we're going to hear  
10 from FEMA later today, and it will help us to understand  
11 where FEMA is on issuing these maps. But I'm disturbed by  
12 the fact that at least an article in the Sacramento Bee -  
13 it was actually an editorial - stated that the City and  
14 County of Sacramento had in effect notified their  
15 developers that there were going to be new flood maps come  
16 out in December and they needed to move forward quickly to  
17 get their development applications in and approved before  
18 those new regulations went into effect.

19 I understand that cities and counties are driven  
20 by the revenue they get from development, and that's  
21 important. And I don't think we can ignore that. But I'm  
22 also bothered by the fact that it seems to me that in that  
23 situation there is additional liability that is  
24 potentially being accrued to the State as well as, at  
25 least in my opinion, being an inappropriate approach to

1 floodplain management.

2           I don't know how the rest of the Board feels  
3 about this. And I don't want to take a great deal more  
4 time today pursuing this, unless the rest of the Board has  
5 a similar concern. I personally would like to ask staff  
6 to survey the land-use agencies around us; find out what  
7 their current floodplain management is; provide us some  
8 information on whether or not those people are using best  
9 available information, which is sort of a term of art in  
10 FEMA regulations, to operate their local floodplain  
11 management program under the National Flood Insurance  
12 Policy. But I think in doing that, it only makes sense to  
13 put staff to that kind of work if the other members of the  
14 Board are interested in delving into whether or not there  
15 is anything the Board could or should be doing to more  
16 forcefully encourage cities and counties to treat their  
17 development in a manner that does not increase the state's  
18 liability or the risk to public safety of development in  
19 these areas.

20           So I guess I'd like to hear from the rest of the  
21 Board.

22           SECRETARY DOHERTY: Butch, I read that same  
23 article, and I was quite disturbed by it. Earlier in the  
24 year there were complaints that Mayor Heather Fargo wanted  
25 to continue to issue permits. But I had thought that no



1 more permits were going to be issued until this area  
2 became flood safe. And according to that article,  
3 business is going on as usual as long as you get your  
4 permit by December. So here we have more and more people  
5 being put at risk. So, yeah, that did disturb me.

6 PRESIDENT CARTER: I think, you know, with all  
7 due respect, we're getting a little far afield from this  
8 particular application. And I think that this is a very,  
9 very important discussion, but probably more important --  
10 or more appropriate for a later item today.

11 I think that your suggestion, Butch, is a good  
12 one, but I'd like to revisit this under Item 15 today if  
13 we could.

14 VICE-PRESIDENT HODGKINS: That's fine.

15 PRESIDENT CARTER: I think the Board should  
16 consider the concerns as they consider this application  
17 and in this hearing. However, having this discussion  
18 right now is really not germane to -- and deciding what to  
19 do in the future's not Germane to deciding on this  
20 application really.

21 VICE-PRESIDENT HODGKINS: I would agree.

22 PRESIDENT CARTER: Okay. So keep that -- we'll  
23 keep that for later on today under Item 15, Board Comments  
24 and Task Leader Reports.

25 You mentioned that you were going to be seeking

1 guidance from FEMA and DWR with regard to how you're going  
2 to address your land-use issues or land-use decisions.

3 Tell me what kind of guidance you're seeking from  
4 DWR.

5 MR. BESSETTE: That's correct. Well, we've been  
6 formulating strategies about -- similar to what I said  
7 earlier about restricting building permit numbers,  
8 restricting areas within our city where we would allow  
9 building permits. So we're trying to -- we're putting  
10 those ideas out there and getting guidance back from them  
11 on those issues.

12 I'd like to point out that we're also actively  
13 promoting flood insurance to all our existing residents.  
14 We're promoting -- we're articulating what our levee  
15 improvement program is to the public. We're trying to be  
16 very active in that regard.

17 We're also -- we read that article in the paper.  
18 And we believe we're doing the exact opposite. We are  
19 letting the development community -- we're letting them be  
20 aware of the FEMA process, but we're not actively  
21 promoting they come in by a certain timeframe, they pull  
22 permits. To the contrary, we're showing them what our  
23 restriction policies that we're formulating, and we're  
24 trying to let them be aware of what those policies are and  
25 how more restrictive they may become in the future. So we

1 think we're taking the exact opposite route of what was in  
2 the paper.

3 SECRETARY DOHERTY: Michael, is it the western  
4 portion of your area of West Sacramento that tends to  
5 flood?

6 MR. BESSETTE: I'm sorry, could you repeat --

7 SECRETARY DOHERTY: Is it the western portion of  
8 your area of West Sacramento that tends to flood?

9 MR. BESSETTE: Yeah, mostly in the south port --  
10 south of the barge canal and on the western side a little  
11 bit in the north area.

12 SECRETARY DOHERTY: Oh, okay.

13 MR. BESSETTE: More high ground is on our east  
14 side along the riverfront.

15 SECRETARY DOHERTY: Yeah. I noticed the houses  
16 are multistoried to stay out of the water.

17 MR. BESSETTE: And then -- that's a good point,  
18 because we're also actively looking at our building code  
19 information and how structures should be built in the  
20 future to get them out of the floodplain.

21 SECRETARY DOHERTY: Good idea.

22 PRESIDENT CARTER: Okay. Mr. Shapiro, you said  
23 that the cooperation agreement was nearly complete. What  
24 concerns do you have about that at this point?

25 MR. SHAPIRO: I actually don't have any concerns

1 about the current draft. Ms. Cahill has been working with  
2 Mr. Tabor at DWR. And he had raised a few additional  
3 issues, which I'm completely open to discussing with both  
4 Ms. Cahill and Mr. Tabor. But we just haven't had time to  
5 sit down and talk in light of yesterday's tour.

6 PRESIDENT CARTER: Okay. Ms. Cahill, can you  
7 relay to the Board what concerns you or DWR has?

8 LEGAL COUNSEL CAHILL: No, I believe the most  
9 critical provisions are the ones in the draft you have  
10 now. But Ward Tabor suggested a few other items, and we  
11 need to think through whether they're really necessary.

12 I would recommend what the staff recommended,  
13 which is that you approve the project and allow --  
14 delegate to the General Manager to let counsel finalize  
15 the agreement and let him sign it.

16 I think we're very close. But we were out in the  
17 field all day yesterday, and I didn't see Ward Tabor's  
18 additional suggestions until last evening and didn't have  
19 a chance to run them to ground.

20 But I think that what we really want out of  
21 this -- this was to follow up on a permit condition that  
22 says the permit won't be effective until there's an  
23 assurance that the permittee will provide assurances to  
24 the Board. And so what we have already is the provision  
25 that they will indemnify the Board and indemnify the

1 government, that is, the Corps of Engineers. I think  
2 those are the critical provisions and anything else would  
3 be secondary.

4 PRESIDENT CARTER: So you don't anticipate any  
5 show stoppers?

6 LEGAL COUNSEL CAHILL: No, I don't.

7 PRESIDENT CARTER: Or any surprises for the  
8 applicant?

9 LEGAL COUNSEL CAHILL: No.

10 PRESIDENT CARTER: Okay.

11 MR. SHAPIRO: And I've seen the additional  
12 provisions that Mr. Tabor suggested. And while I don't  
13 agree they need to be in there, there are certainly no  
14 surprises. I don't think -- I think that's the complete  
15 universe of what we're talking about.

16 And just so the Board understands also, one of  
17 the provisions not in here is that the applicant will  
18 operate and maintain the project, which you typically see.  
19 But that's because this is actually a state maintenance  
20 area. These levees are maintained by the state already.  
21 So West SAFCA is coming in and fixing the levees that the  
22 state maintains.

23 PRESIDENT CARTER: Okay.

24 SECRETARY DOHERTY: Scott, so you don't  
25 necessarily agree with some of the things but it's okay if

1 they go in there?

2 MR. SHAPIRO: Well, I'd rather not see them in  
3 there. I'm not understanding why they need to be in  
4 there. Perhaps once it's explained, I may change my mind,  
5 but -- I think we have disagreement of counsel, but we're  
6 not -- it's not vehement disagreement of counsel.

7 BOARD MEMBER RIE: It seems like there's some  
8 things in here that aren't normally in a cooperation  
9 agreement. For instance, whereas the Board has requested  
10 408. And that doesn't need to be there. Is that what  
11 you're disagreeing with?

12 MR. SHAPIRO: No, the three issues that we're  
13 talking about are not reflected in the draft before you.  
14 One is a statement that in complying with the agreement,  
15 the applicant will comply with all state and federal  
16 anti-discrimination laws. I don't disagree that we're  
17 required to comply with the law. I'm not sure why that  
18 one provision would show up, especially because our only  
19 obligation under the agreement is to indemnify. So I  
20 don't understand how we could comply with the  
21 anti-discrimination laws in indemnifying. There's a  
22 disconnect there for me.

23 Another one of the issues that Mr. Tabor raised  
24 was that West SAFCA would notify all landowners and  
25 interested parties within its jurisdiction of the level of

1 flood protection when requested. That has been a  
2 provision that's typically been included in grant  
3 agreements as a condition of the state giving money to the  
4 applicant. Then the state says, "We want to make sure the  
5 word is getting out.

6           This isn't a grant agreement. We're not  
7 receiving any state funding for this. We're not opposed  
8 to dissemination, as Mike talked about. We're actually  
9 providing dissemination. But at the moment we don't know  
10 what the level of flood protection is and we don't think  
11 that fixing one -- how many yards -- how many feet is  
12 this? -- 475 feet of levee will affect the issue of what  
13 the level of flood protection is. So it just doesn't seem  
14 relevant.

15           And I don't remember what the third one is. But  
16 that gives you a flavor of the little issues we're talking  
17 about.

18           LEGAL COUNSEL CAHILL: Well, there was one more  
19 about, upon receipt of the approvals, West SAFCA would  
20 diligently prosecute it to completion. In fact, the  
21 permits says that if they don't do it within a year, we  
22 can change the conditions. The permit itself doesn't  
23 require that, so there's no reason for the assurance  
24 agreement to.

25           I'm quite confident that if you delegate this,

1 we'll be able to finish it up.

2 BOARD MEMBER RIE: I'd like to ask a question on  
3 the permit.

4 Where are you guys at with the Corps? Did they  
5 ever respond to the March 21st letter we sent them?

6 MR. SHAPIRO: The 408 request letter?

7 BOARD MEMBER RIE: Um-hmm.

8 MR. SHAPIRO: Are you aware of the latest on  
9 where it is within the Corps review or is that an errant  
10 question?

11 It is still in 408 review. Eric can give a  
12 little bit more detail.

13 BOARD MEMBER RIE: Okay.

14 MR. NAGY: President Carter, members of the  
15 Board. Good morning. For the record, my name is Eric  
16 Nagy, a civil engineer with HDR Engineering, under  
17 contract to the City of West Sacramento and West SAFCA.

18 In response to your question with regard to the  
19 March letter to the Corps. They are -- the permit -- or  
20 the 408 approval request is under review. It has been  
21 endorsed forward by the Sacramento District to the South  
22 Pacific Division office in San Francisco. And they  
23 currently have it under review. We've received word  
24 informally that they've approved it, and that this week it  
25 would be moving forward to the headquarters of the U.S.



1 Army Corps of Engineers in Washington DC for  
2 consideration.

3 To date, we've heard no information -- or no  
4 concerns with regard to our request.

5 BOARD MEMBER RIE: Okay.

6 MR. NAGY: And they are also aware of our looming  
7 deadline to award a construction contract September 1st,  
8 and we've requested approval by August 25th.

9 BOARD MEMBER RIE: Okay. Thank you.

10 PRESIDENT CARTER: Thank you.

11 Does the applicant wish to add anything?

12 MR. SHAPIRO: No. Thank you again for your  
13 consideration.

14 PRESIDENT CARTER: Thank you.

15 At this time are there any other members of the  
16 audience or staff that would like to speak in support of  
17 the application?

18 Are there any members of the audience or public  
19 that would like to speak in opposition to the application?

20 Okay. Anybody want to comment at all?

21 (Laughter.)

22 PRESIDENT CARTER: Very good.

23 Is there any rebuttal testimony to the  
24 application or to the applicant?

25 Okay. Board staff wish to make any additional

1 comments?

2 All right. At this point we will close the  
3 testimony portion of our hearing and go into deliberation,  
4 the Board members.

5 Are there any questions, any comments the Board  
6 has for staff, the applicant?

7 VICE-PRESIDENT HODGKINS: The question of  
8 requiring notification of the community of the level of  
9 flood protection. I know that SAFCA's original permit for  
10 Natomas put that burden on SAFCA. In the Three Rivers  
11 permit, I think we put that burden on Three Rivers. Am I  
12 correct, Scott?

13 MR. SHAPIRO: I don't recall that being in the  
14 permit. I recall that being a condition of the EIP grant.  
15 But my memory may be faulty. But Paul Brunner of Three  
16 Rivers is here, and he may remember differently.

17 Do you remember differently?

18 MR. BRUNNER: What was the question? I just was  
19 on something else.

20 Paul Brunner, Three Rivers Levee Improvement  
21 Executive Director. I have no recollection of our permit  
22 requiring that requirement.

23 VICE-PRESIDENT HODGKINS: Okay. But you do have  
24 a requirement to indemnify and hold the state harmless  
25 that was extended to the county?

1           MR. BRUNNER: We do. It has varied from permit  
2 to permit, but yes.

3           VICE-PRESIDENT HODGKINS: Thank you.

4           In negotiating the final conditions of the  
5 permit, I don't have a problem with that. But from a  
6 policy standpoint, I'd like to ask the Board to consider  
7 making the requirement that the applicant annually notify  
8 people within its jurisdiction of the level of flood  
9 protection a condition of the permit. And I think part of  
10 the -- I'm not sure why staff was trying to get it into  
11 the LPCA, because I don't think that's typically where  
12 it's been in the past. But I'd like to know why they were  
13 trying to get it in the LPCA.

14          PRESIDENT CARTER: Does staff want to comment on  
15 the intent of the provisions of the LPCA?

16          SUPERVISING ENGINEER FUA: Actually this is not  
17 the local project cooperation agreement, but this is a  
18 term that we use -- it's a cooperation agreement, but the  
19 purpose of this agreement is to essentially the  
20 indemnification and also to assign obligations between the  
21 Board and the applicant.

22          So the typical LPCA actually has, you know, like  
23 cost-sharing agreement, but this one is not.

24          VICE-PRESIDENT HODGKINS: Okay. To me -- I would  
25 propose when we get to the permit that it be both a

1 condition of the permit and a condition of the LPCA. I  
2 think the LPCA provides a better mechanism for the Board  
3 to assure compliance than the permit does. I mean once  
4 they go ahead and do the work, you have no real incentive.  
5 Whereas the LPCA has money and is part of a long-term  
6 agreement.

7           SUPERVISING ENGINEER FUA: Will do in the future  
8 permits.

9           PRESIDENT CARTER: Is there any reason why the  
10 county is not included in the indemnification agreement?

11           SUPERVISING ENGINEER FUA: It's because the  
12 county is not part of the West SAFCA. West SAFCA is  
13 composed of the City of West Sacramento, Reclamation  
14 Districts 900 and 537.

15           VICE-PRESIDENT HODGKINS: And so you understand,  
16 you're getting an indemnification from the West Sacramento  
17 Flood Control Agency, which in this case is partly there  
18 to shield the city from the potential financial liability  
19 that it might otherwise incur as it moves forward with  
20 development in an area that has questionable flood  
21 protection. That's the case with SAFCA. That's why it  
22 was created, at least a significant portion of the reason  
23 it was created. That's the case with Three Rivers, that's  
24 the case with SJAFCA, and that's the case where a  
25 reclamation district is the permit applicant. That

1 indemnification has a value that's equal to the ability of  
2 the agency you get it from to raise money.

3           And in the case of the West Sacramento Area Flood  
4 Control Agency, they have some stream of revenue. But I  
5 doubt that it's much in terms of its ability to provide,  
6 say, as much as even \$50 million should there be a flood  
7 and a suit like occurred up at Three Rivers, where the  
8 state's liability was half a billion dollars.

9           LEGAL COUNSEL CAHILL: This is on your agenda for  
10 next month as a policy decision for the Board to be made,  
11 this whole question of how we handle the joint powers  
12 agreements. You might ask the West Sacramento  
13 representatives who are here today if they would be  
14 willing to be on this agreement. And if they agree to do  
15 so, we can add them.

16           The maintenance is in a state maintenance  
17 agreement. So I think it would be the City of West  
18 Sacramento that would be the other interested party in  
19 this case and not all the members of the JPA, because the  
20 reclamation district, my understanding is, it's not in  
21 their territory.

22           PRESIDENT CARTER: Mr. Shapiro.

23           MR. SHAPIRO: Thank you, President Carter.

24           So a few thoughts. As a starting point, you know  
25 because I've advocated many times that Three Rivers was

1 treated unfairly. And I'm not going to bring that up  
2 except to say that that remains a concern of mine and  
3 Three Rivers. But I do think there are some legitimate  
4 distinctions between the reasons that the Board has sought  
5 to pierce through Three Rivers and why that's really not  
6 applicable in the West Sac circumstance.

7           One is, unlike Three Rivers where the Board has  
8 been concerned that it was formed to do the work and would  
9 disappear after the work was done -- and I don't agree  
10 that that's necessarily relevant but that has been a  
11 voiced concern of the Board -- West SAFCA was formed 13  
12 years ago. It wasn't just formed last month for this  
13 purpose. It has had two assessments, one to do the work  
14 in the nineties and one to do the work now in 2007 going  
15 forward. It is raising \$40 million, basically most of the  
16 local share, to do the work. It is not a effemoral. It  
17 is not an entity that will disappear in the dead of night.  
18 It's been around, it's going to be around. It has to.  
19 It's actually the assessment holder and the bond seller.  
20 So there's I think a unique circumstance there that is  
21 very distinguishable from the Three Rivers circumstance.

22           I think a second thing is is that in the Three  
23 Rivers circumstance there was the concern, well, you know,  
24 who's going to be around. There was actually a strong  
25 interest in having RD 784 sign on so that there was an

1 obligation to actually maintain the levees. Well, who's  
2 maintaining this levee? The State of California. Is the  
3 Board interested in having the State of California sign  
4 the cooperation agreement so you can make sure the state  
5 actually does its obligation to maintain the levees? I  
6 mean that's just not what we would normally do and I'm not  
7 proposing we do that.

8           But I think the circumstances are unique or at  
9 least different than the Three Rivers circumstance. We're  
10 talking about a tiny section of levee, 475 or so feet.  
11 The only obligation in this is an indemnification  
12 obligation. The only issue that the indemnification  
13 applies to really is the construction and design, because  
14 the state's maintaining it itself. And the construction  
15 and design has been reviewed and will be reviewed by the  
16 state as well as the Corps. The Corps has done the  
17 review, the state has done its review through your Rec  
18 Board staff.

19           So to the extent that this is a concern of the  
20 Board, I would propose argue about the policy next month  
21 at the item that Ms. Cahill has mentioned - it's on your  
22 proposed agenda - adopt your policy. But I don't think  
23 this is the time to try to figure out a policy in the next  
24 five minutes when the circumstances I think are pretty  
25 different.

1           As to the explicit question that Ms. Cahill noted  
2 of whether the city would be willing to sign and RD 900  
3 would be willing to sign and RD 537 would be willing to  
4 sign, I don't know the answer to that. Although I can  
5 imagine that the RDs might say, "Why am I signing? I'm  
6 not maintaining this levee." And the city might be in a  
7 similar position. But I have not posed the question to  
8 them, so I cannot answer the question.

9           BOARD MEMBER BROWN: Mr. Chairman?

10          PRESIDENT CARTER: Mr. Brown.

11          BOARD MEMBER BROWN: Mr. Shapiro has I think an  
12 excellent point. I agree with Mr. Hodgkins on the concern  
13 of how the development is taking place. But I recognize  
14 this issue here is a project that's going to at least help  
15 to address that situation. And I suggest that we go ahead  
16 and approve this permit and pick it up again with Item 15.

17          So on that basis, if you will permit me, I'd like  
18 to make a motion.

19          And I'll move, Mr. Chairman, that we adopt the  
20 CEQA findings as presented and approve Permit 18336 and  
21 delegate the authority to our officers to make the  
22 agreement as proposed.

23          BOARD MEMBER RIE: Second.

24          PRESIDENT CARTER: Okay. We have a motion and a  
25 second.



1           Mr. Hodgkins, you had made a suggestion that we  
2   condition the permit upon the notification of the  
3   residents of the level of flood protection.

4           VICE-PRESIDENT HODGKINS: I need to be careful  
5   because I don't understand the rules here about there  
6   being a motion on the floor. But --

7           PRESIDENT CARTER: No, this would be part of the  
8   discussion of the motion.

9           VICE-PRESIDENT HODGKINS: Okay. I would have  
10   absolutely no problem with that motion if the motion  
11   included in it that from the Board's -- the Board would  
12   like to see both the permit and the LPCA require annual  
13   notification of the residents within the agency's  
14   jurisdiction of the level of flood protection.

15          SECRETARY DOHERTY: So are you asking him to  
16   amend his motion?

17          VICE-PRESIDENT HODGKINS: I think that's what I'm  
18   asking.

19          Yes, that's what I'm asking, would you be willing  
20   to do that.

21          BOARD MEMBER BROWN: Okay. I'm not sure I  
22   recognize the benefit of that, Mr. Chairman. I'd like to  
23   hear from the other Board members to see if they have a  
24   concurrence or not. That would be -- I'm not sure I  
25   understand the benefit or the need. But I'd like to hear

1 from others. I'm open to the suggestion, but...

2 BOARD MEMBER SUAREZ: Mr. Chairman, if I may.

3 PRESIDENT CARTER: Please.

4 BOARD MEMBER SUAREZ: I'm open -- I mean I think  
5 it's always an excellent idea for the Board to be more  
6 informed. I just get worried when we start making a  
7 policy of one. So I'd like some clarification.

8 Is this something that we have required from  
9 other permits in the past? I mean recognizing that Three  
10 Rivers has its own history regarding notification  
11 requirements and things of that sort.

12 I don't mind a discussion in the future about  
13 the --

14 EXECUTIVE OFFICER PUNIA: I think we haven't  
15 required from all the permits. But some permits like  
16 TRLIA the Board has imposed these type of conditions.

17 BOARD MEMBER SUAREZ: Correct. And these are  
18 conditions that are discussed in advance and the applicant  
19 is fully aware and issues have been negotiated and time  
20 tables.

21 EXECUTIVE OFFICER PUNIA: That's correct.

22 BOARD MEMBER SUAREZ: So that would be my only --  
23 and the principle, it's always a great idea. But to me,  
24 we're making a policy of one right here on an issue that  
25 I'm sure the applicant is completely -- I imagine you're

1 caught off by surprise on this requirement.

2 PRESIDENT CARTER: SAFCA permits. Has this been  
3 a condition of any of those permits?

4 EXECUTIVE OFFICER PUNIA: I think I cannot answer  
5 this question. We can revisit the SAFCA permit and then  
6 provide that information.

7 VICE-PRESIDENT HODGKINS: I can answer the  
8 question.

9 It is a condition of the master permit that was  
10 granted in I think 1994 or 5 that SAFCA notify people  
11 annually of the level of flood protection.

12 PRESIDENT CARTER: Okay. Any other Board  
13 comments on this?

14 SECRETARY DOHERTY: I feel that this is what we  
15 had, this is what we've studied, this is what they  
16 requested approval on. And I think that to change the  
17 requirements at the last minute is, as long as it's not  
18 endangering the public, is wrong on our part. And I would  
19 like to urge you to maintain your position and adopt the  
20 CEQA findings in 18336 approval.

21 PRESIDENT CARTER: Any other members have  
22 comments?

23 Okay. I'd like to invite the applicant to  
24 comment on the proposed change.

25 MR. SHAPIRO: The applicant really hasn't had a

1 chance to caucus on this issue. We feel that if the Board  
2 adopts a policy after due consideration that this is what  
3 should be in permits, then we can live by that. But we  
4 tend to agree that sticking it in a permit on a  
5 case-by-case basis is not the best way to proceed.

6 PRESIDENT CARTER: Okay.

7 MR. BESSETTE: And just from a city standpoint -  
8 and I believe I stated this earlier - public safety,  
9 public awareness is our number one priority. We are doing  
10 all the efforts we can to get that word out there what our  
11 level of protection is, what we're doing as far as a city  
12 to improve our levees, what we feel the public should be  
13 doing for emergency preparedness, flood insurance. So  
14 we're getting the word out. I believe we're doing our  
15 part to get that word to the public. But we would  
16 certainly consider permit applications in the future if  
17 you put that requirement in there. But I think we're  
18 doing that now.

19 Thank you.

20 MR. SHAPIRO: Thank you.

21 And I wonder if I can just be more specific. The  
22 city does a quarterly newsletter called "Highlights,"  
23 which is sent to all residents. And in the year and a  
24 half that I've been working with West SAFCA, every  
25 Highlights has had a flood protection article in it

1 talking about how to prepare yourself, what the city's  
2 doing. So it is a constant theme of the information  
3 that's being sent out.

4 PRESIDENT CARTER: Thank you.

5 Mr. Fua.

6 SUPERVISING ENGINEER FUA: Mr. Ricardo Pineda of  
7 the Department of Water Resources has some information  
8 about annual notifications. So if you'd like to hear from  
9 them from the state's point of view, he's here.

10 PRESIDENT CARTER: Go ahead, Mr. Pineda.

11 DWR FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:

12 Good morning, President Carter, Vice President  
13 Hodgkins, and members of the Board. For the record, my  
14 name is Ricardo Pineda. I'm the Department's Floodplain  
15 Manager and Chief of the Floodplain Management Branch of  
16 the Division of Flood Management.

17 I think it's important for the Board to -- in  
18 this discussion about annual notification to the residents  
19 of the City of West Sacramento about their flood risk, to  
20 ensure that the Board has the full knowledge of laws -- or  
21 bills that were passed that are now laws of that package  
22 of six bills. And while it's hard for all of us to  
23 remember the numbers and the authors of each of the bills,  
24 I'm responsible for implementing the Risk Notification  
25 Program provisions of Assembly Bill 162. And I hope that

1 I have the bill number right. But I know 162 was signed  
2 by Assemblyman John Laird -- or was authored by  
3 Assemblyman John Laird of Santa Cruz area.

4 And essentially AB 162 has two provisions related  
5 to risk notification. And I'm just going to briefly  
6 mention those. And you'll digest those and see if those  
7 factor into your decision about what you're asking the  
8 City of West Sacramento.

9 By December 31st, 2008, DWR has to prepare levee  
10 flood protection zone maps for all areas that are  
11 protected by facilities of the State Plan of Flood Control  
12 of the Central Valley, essentially our 1,600 miles of  
13 levee. And we have to send those letters -- we have to  
14 send those maps or make them available to the communities  
15 protected by those facilities. And so we're going to  
16 prepare these maps - we're in the process of preparing  
17 them and packaging them up electronically and hard  
18 copies - and mail them out to the cities and the counties  
19 and the reclamation districts and levee districts that are  
20 protected by the facilities of the State Plan of Flood  
21 Control. So approximately 14 or 15 counties.

22 So those will show if you're protected by a  
23 project levee using approximate technical mapping means  
24 with data we have available.

25 Okay. There's another provision -- and we're

1 well on the way of doing that. So to a certain degree  
2 we'll go to the cities and counties. It will be on the  
3 web, and so homeowners could look at it at that time to  
4 see if they're in a levee flood protection zone, which may  
5 be a bigger area than a 200-year floodplain or maybe even  
6 a bigger area than a 500-year floodplain.

7 I believe the next provision of the bill - and  
8 I'm kind of quoting this from memory -- or stating it from  
9 memory - is by September 2010 we have to develop more  
10 detailed levee flood protection zone maps, same principle,  
11 "Are you protected by a project levee," kind of assuming  
12 water's at the top; and by that date we have to mail  
13 letters out to each individual property owner telling them  
14 that they're protected by a project levee, that they're in  
15 a levee flood protection zone, or an LFPZ.

16 Of course our technical analysis will be more  
17 detailed and we'll be able to have more information to  
18 share with the individual property owner that goes beyond  
19 "you're protected by a project levee." We envision the  
20 letter saying, you know, "You're identified as the owner  
21 of this particular property in this particular city or  
22 county. You're protected by these project" -- "you've  
23 been identified as being in a levee flood protection zone  
24 from these levees" - say the Sacramento River and the Yolo  
25 bypass and the Sacramento bypass. "You could get wet if

1 any of those were to fail. Your anticipated flood depth  
2 conservatively estimated would be this amount. Your flood  
3 damages" - using kind of standard computation techniques -  
4 "could be this amount. These are types of mitigation  
5 measures you should consider adopting" - like having flood  
6 insurance. "Here's the website to go to or here's the  
7 phone number to call. You should have an emergency  
8 evacuation plan and other mitigation-type measures."

9           So I wanted to make sure the Board understood  
10 that AB 162 within the package of six flood bills requires  
11 us by September 2010 to notify every property owner  
12 protected by project levees that are part of the State  
13 Plan of Flood Control. And we're estimating that at a  
14 minimum that will be 400,000 property owners computed  
15 using comprehensive study data in 2000. And we're seeing  
16 now that that number may be significantly underestimated.  
17 We may be sending out 600, 700,000 letters a year. So  
18 it's going to be a very big exercise, a lot of GIS and  
19 parcel data. And hopefully we won't have to be licking or  
20 peeling stamps. It will be kind of an automatic thing.

21           BOARD MEMBER RIE: Can I interrupt you?

22           DWR FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:

23           Sure. I'm done.

24           BOARD MEMBER RIE: So DWR's going to send out all  
25 these letters?



1 DWR FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:

2 That is correct.

3 BOARD MEMBER RIE: Does that include West  
4 Sacramento residents?

5 DWR FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:

6 If the West Sacramento residents are protected by  
7 facilities of the State Plan of Flood Control, yes. And  
8 they are protected.

9 BOARD MEMBER RIE: Okay. Thank you.

10 PRESIDENT CARTER: Mr. Punia.

11 EXECUTIVE OFFICER PUNIA: I just want to let the  
12 Board know that this is one of the several projects the  
13 City of West Sacramento will be bringing to the Board if  
14 based upon next month's discussion we change our policy  
15 where we can impose these type of conditions in the future  
16 projects.

17 PRESIDENT CARTER: Thank you.

18 BOARD MEMBER BROWN: Mr. Chairman, I voice  
19 another concern, is that if we get into the management or  
20 implementation of portions of this permit, I wonder what  
21 liability that may open us up to if we miss something  
22 later on. While I concur with Mr. Hodgkins that the  
23 residents need to be put on notice of what's happening out  
24 there, but I think that's the primary responsibility of  
25 the applicant and not this Board. I'm concerned that this

1 may be a slippery slope for our Board to get into.

2 PRESIDENT CARTER: Thank you.

3 Okay. Ladies and gentlemen, we have a motion and  
4 a second before us. The motion is, as you recall, to  
5 approve Permit No. 18336 and to adopt the CEQA findings  
6 and file a notice of determination; also to delegate the  
7 authority to the Executive Officer to complete and sign  
8 the cooperation agreement between the Board and West  
9 Sacramento Area Flood Control Agency for indemnification  
10 and obligation assignment purposes.

11 So does everybody understand the motion?

12 Are we ready for a vote? Any further questions,  
13 discussion?

14 Mr. Punia, could call the roll, please.

15 EXECUTIVE OFFICER PUNIA: Board Member Emma  
16 Suarez?

17 BOARD MEMBER SUAREZ: Aye.

18 EXECUTIVE OFFICER PUNIA: Vice-President Butch  
19 Hodgkins?

20 VICE-PRESIDENT HODGKINS: No.

21 EXECUTIVE OFFICER PUNIA: Board Member Teri Rie?

22 BOARD MEMBER RIE: Aye.

23 EXECUTIVE OFFICER PUNIA: Board Member John  
24 Brown?

25 BOARD MEMBER BROWN: Aye.

1 EXECUTIVE OFFICER PUNIA: Board Member Lady Bug?

2 SECRETARY DOHERTY: Aye.

3 EXECUTIVE OFFICER PUNIA: Board President Ben  
4 Carter?

5 PRESIDENT CARTER: Aye.

6 So the motion carries 5 to 1.

7 Thank you very much.

8 We'll at this time close this hearing. Thank you  
9 very much.

10 SUPERVISING ENGINEER FUA: Thank you.

11 PRESIDENT CARTER: Ladies and gentlemen, let's go  
12 ahead and take a ten-minute recess. We'll be back here,  
13 and we will continue on with our agenda on Item No. 6,  
14 Report of the Activities of the Department of Water  
15 Resources.

16 Thank you.

17 (Thereupon a recess was taken.)

18 PRESIDENT CARTER: Ladies and gentlemen, if I  
19 could ask you to take your seats, we'll go ahead and  
20 continue with our meeting. As you recall, we had just  
21 finished up our hearing on Item 5 and we're now on to the  
22 Report of the Activities of Department of Water Resources.

23 Good morning, Mr. Qualley. Thank you for your  
24 patience.

25 DWR DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

1           Good morning, President Carter, members of the  
2 Board.

3           Let's start off as we usually do with water  
4 conditions. Although this time of year is not much  
5 changes on water conditions and it's still not a good  
6 story. I found it interesting that our numbers from 2007  
7 and 2008 as of July 31st were almost identical. So we've  
8 had about 54 percent of average for these two years. So  
9 you don't have to be a hydrologist to surmise from that  
10 that we are, you know, certainly in a dry-year situation  
11 and we're all going to be hoping for a more fruitful water  
12 year coming up.

13           Moving to Levee Repairs Branch. As many of you  
14 are aware, we've been working diligently to get the  
15 agreements in place, working diligently with Board staff,  
16 with our own staff, with reclamation districts and their  
17 counsel, to get the project cooperation agreements in  
18 place for both the Sacramento Bank Protection Project  
19 sites and the PL 84-99 sites. We managed to get almost  
20 all of them done. RD 501 is still in negotiations on  
21 language. So it's looking pretty good like we'll get that  
22 one signed before the end of the month as well.

23           Certainly we're going to be applying lessons  
24 learned from this process so that we don't -- so we aren't  
25 faced with this type of a crunch situation in the future

1 to get all these agreements in place. This was, you know,  
2 difficult for everybody involved in order to be able to do  
3 this work this construction year. And it is a significant  
4 amount of work. It's \$20 million worth on the Sacramento  
5 River Bank Protection Project and about 40 million on the  
6 PL 84-99. So it looks like we have pretty well worked it  
7 out to keep that work moving. And again thanks and kudos  
8 to all involved in making that happen.

9 Moving to Floodplain Management Branch. Senate  
10 Bill SB 5, Best Available Maps, you've been briefed on  
11 that at an earlier meeting. And as I'd mentioned before,  
12 we had sent them out to the cities -- 32 counties and 91  
13 cities on July 1st in order -- several local entities had  
14 requested that we allow some time for them to look at the  
15 maps and get familiar with them; if they have technical  
16 questions on the maps, to raise those questions.

17 We have gotten actually a total of 25 comment  
18 letters to date. We're preparing response letters and  
19 Emails to all of them. And we're -- your written version  
20 indicates we were planning on opening up the website and  
21 doing a press release the end of August, where it's more  
22 likely going to be the first week of September, probably  
23 around September 8th. But it will be coming up, you know,  
24 very soon.

25 There was a number of comments. I know we're

1 running a little bit behind your normal schedule here  
2 today. Ricardo Pineda is here. If you're interested in  
3 hearing more detail about the flavor of the comments and  
4 the responses, he'd be happy to come up and address the  
5 Board. If you'd rather have me move on to other things,  
6 we can do that too. So it's the pleasure of the Board  
7 whether I ask Ricardo to provide some more detail on that.

8 PRESIDENT CARTER: Do we want to hear from --

9 BOARD MEMBER RIE: Yes.

10 BOARD MEMBER BROWN: Keep going, George. You're  
11 doing good.

12 PRESIDENT CARTER: Ricardo, George?

13 BOARD MEMBER RIE: Ricardo.

14 SECRETARY DOHERTY: George.

15 (Laughter.)

16 DWR DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

17 How about five minutes worth from Ricardo?

18 BOARD MEMBER BROWN: The George that's up. He's  
19 doing a good job.

20 DWR DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

21 Ricardo will give you a short summary.

22 DWR FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:

23 Good morning again, President Carter, members of  
24 the Board.

25 As you're aware, Division Chief Qualley mentioned

1 that we received 25 comment letters. Maybe 26. I seem to  
2 get filtering in about one every other day. We do intend  
3 to wrap this up and go public by September 8th. I have a  
4 list of, you know, all the cities and counties and RDs  
5 that have submitted comments.

6 I'll just briefly go through with you, I think --  
7 as an example, I met with San Joaquin County Flood Control  
8 and Water Conservation District and the City of Manteca  
9 and RD 2062 and City of Stockton on Monday. And the type  
10 of -- their comments are somewhat typical of the other  
11 agencies.

12 One, they want the maps delayed until all their  
13 comments are addressed. There was some confusion about  
14 the delineation of the 200-year floodplain. This best  
15 available maps product, we're required by Senate Bill 5 to  
16 delineate, using best available data, a variety of  
17 sources, the best 100-year and 200-year floodplains. And  
18 the only 200-year floodplain we had was from the  
19 comprehensive study. And the comprehensive study has  
20 limitations on how it did the analysis. So there were a  
21 lot of comments about that.

22 There were comments that many of the levees that  
23 we identified as nonproject levees were not really levees.  
24 We're working to resolve that. There were comments about  
25 the base map and the coloration of those base maps

1 features and how to -- recommendations on how to make the  
2 floodplains more visible. And we appreciated those  
3 comments.

4           There was a comment in San Joaquin County and by  
5 the City of West Sacramento. For San Joaquin County we  
6 put Reclamation District 17 within the 100-year floodplain  
7 based upon levee deficiencies that have been identified.  
8 And we did the same with City of West Sacramento. And  
9 that is not reflected in the comprehensive study 100-year  
10 map or a current FEMA map for those areas.

11           So those two issues brought up lots of concerns  
12 via the comment letters and telephone conferences and  
13 meetings that we have had.

14           San Joaquin County officials expressed that they  
15 live and die by the FEMA 100-year maps, and that by  
16 putting out these maps that show 100-year floodplains  
17 different from the FEMA maps, that that was going to cause  
18 community officials to be confused and residents to be  
19 confused. And while I understand that comment, I think  
20 the Legislature also understood that the FEMA maps have  
21 limitations and they may not truly show the extent of the  
22 100-year floodplain, and the Legislature understood that  
23 there were additional other data sources out there from  
24 DWR and the Corps that showed additional areas in the  
25 100-year floodplain and that we should make that



1 information public even though it may not be regulatory.

2           So that essentially gives you a sense of the  
3 comments. I know when we make the maps public, some  
4 communities will feel that we -- that we didn't do  
5 everything we wanted them to do. But we are addressing  
6 every comment and we've made a lot of changes based upon  
7 the information that we've received from them. And we  
8 really think it was a good idea to give them 30 days to  
9 review and us some -- and DWR some time to make  
10 adjustments.

11           We held five teleconference workshops with  
12 cities, counties, and RDs and had pretty good attendance  
13 at those. And then I've gone to a couple of meetings  
14 where we needed to be face to face to go over issues.

15           So that's about it. So we're moving ahead. And  
16 we feel that these maps will be very beneficial to  
17 planners and to elected officials who are making land-use  
18 decisions.

19           One important comment that I didn't mention that  
20 came from an attorney that works on flood issues in San  
21 Joaquin County was that he felt that this was going to  
22 cost a lot of money to maintain these maps, and that money  
23 would be better spent on structural flood control  
24 improvements; that essentially these maps weren't very  
25 beneficial to his constituents and we should invest the

1 money in other activities.

2 In response to that -- that's an important  
3 comment -- at least I responded that I believe the intent  
4 of the bond and of the six bills was to do the best we can  
5 to improve the structural flood control system -- Mr.  
6 Qualley and others describe all the types of structural  
7 projects that are going on -- but also to kind of maximize  
8 the nonstructural activities that cities, counties and RDs  
9 and DWR is doing, because we feel that optimum combination  
10 of structural and nonstructural will give us the highest -  
11 lack of a better term - benefit-to-cost ratio in reducing  
12 flood risk. And I'm very heartened to hear Board Member  
13 Hodgkins at various Central Valley Flood Board meetings  
14 advocating better floodplain management at the local  
15 level. And that's something that there's a lot of room  
16 for improvement. Communities are doing pretty good.  
17 They're doing the minimum. And I think they can go a lot  
18 better, and I think some communities are.

19 So this project is important in that area.

20 BOARD MEMBER RIE: Question?

21 DWR FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:

22 Yes.

23 BOARD MEMBER RIE: How are you guys going to deal  
24 with LOMRs?

25 DWR FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:

1           That was another comment that came. We have  
2 incorporated letters of map revision. So a LOMR, just for  
3 the Board's knowledge and the public's acknowledge, is  
4 FEMA puts out a map, and then that map can be changed  
5 essentially through three processes: A physical map  
6 revision, or PMR, which is a big change to the map; a  
7 LOMA, letter of map amendment, which is essentially like  
8 for one or two properties; or a LOMR, which is kind of a  
9 bigger map change but not as big as a PMR.

10           So we're dealing with that in two ways. Where  
11 the data that we have for the effective FEMA 100-year  
12 floodplain has been changed by a LOMR and the community  
13 has pointed that out, we're making changes. But we didn't  
14 go through and inventory all the LOMRs and change what we  
15 call kind of the effective 100-year floodplain.

16           As FEMA comes out with the DFIRMs, the digital  
17 flood insurance rate maps - and Kathy Schaefer of FEMA is  
18 going to explain that to you this afternoon - FEMA will be  
19 changing the electronic version of the 100-year map much  
20 more rapidly than they have in the past.

21           So right now we're kind of in the cusp of  
22 moving from paper maps that have been scanned to truly GIS  
23 digital maps. So right now we have a mix -- in the Best  
24 Available Maps Project we have a mix based upon what's  
25 available. But in probably about one or two years will

1 be -- all the FEMA maps will be GIS-based DFIRMs, and they  
2 will be updating them much more rapidly.

3           So right now it's kind of we've made some  
4 corrections for LOMRs and others we haven't just because  
5 it's a huge task to inventory all of those.

6           BOARD MEMBER RIE: So how are you going to deal  
7 with that in the future as LOMRs come up? Is DWR going to  
8 be equipped and staffed to make those changes as FEMA's  
9 making the changes?

10           DWR FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: I  
11 believe we will be equipped. Essentially we'll probably  
12 go through twice-a-year cycle, or as soon as -- if FEMA  
13 puts out a new digital flood insurance rate map for an  
14 area based upon LOMRs, we will import that layer to the  
15 best available map products and put it on the website. So  
16 essentially it becomes kind of an electronic process. So  
17 hopefully every two -- we'll go through a cycle of doing  
18 updates to the best available maps based upon products  
19 that FEMA puts out or others put out.

20           BOARD MEMBER RIE: Are you guys going to  
21 coordinate with FEMA on this? Because it seems like the  
22 state is going to be expending a lot of money to keep up  
23 these maps and FEMA also is going to be keeping up their  
24 maps, and it's going to be a parallel process. Is there  
25 any efforts to coordinate and try to streamline and reduce

1 the costs?

2 DWR FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:

3 Well, we are coordinating with FEMA -- remember,  
4 these maps -- the FEMA component of the best available  
5 maps is one of many sources. So because FEMA's moving to  
6 a digital geographic information system environment, we  
7 can already download their files when they're available to  
8 us as an agency and we can -- well, even if they're not  
9 final, sometimes we get permission to use them. So  
10 essentially it's not that big of a deal because we're not  
11 piecing together paper maps and creating an electronic  
12 version. We're just kind of downloading files.

13 But it's important for the Board to note that  
14 this is not a repetition of what FEMA's already doing.  
15 The FEMA data is just one source. And as the Central  
16 Valley Flood Plan required by Senate Bill 5 develops new  
17 floodplains and they go through a public vetting process,  
18 then we will be incorporating these additional map  
19 information into the best available maps.

20 So this is going to be essentially a location for  
21 the public to go to, and it's going to be linked on the  
22 Central Valley Board's website, which is required by law,  
23 for public to look at always kind of best available maps  
24 for 100- and 200-year floodplains kind of based on  
25 studies, even if those studies are not for regulatory

1 purposes. So I think we can do it cost-effective-wise  
2 because it's kind of an electronic process.

3 BOARD MEMBER RIE: And when are you going to come  
4 out with the revised maps?

5 DWR FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:

6 We're coming out with the revised maps -- we're  
7 making the modifications based upon the review by the  
8 communities and the reclamation districts right now. And  
9 the plan is to mail out the response letters, the 25  
10 response letters by the end of the month, and to  
11 essentially have the website go live and issue the DWR's  
12 press release by September 8th. That's my proposed  
13 schedule to management. And I haven't heard anything to  
14 contradict that at this point.

15 BOARD MEMBER RIE: Okay. Thank you.

16 PRESIDENT CARTER: Thank you Mr. Pineda.

17 DWR FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:

18 You're welcome.

19 DWR DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

20 One more item required by SB 5 that Ricardo's  
21 branch is working on is SB 5 building standards. And  
22 they're off to a really good start on that and formed the  
23 Technical Advisory Committee, that they'll be having their  
24 first meeting late this month. And you'll be hearing more  
25 detail on that as we go through time. They have developed

1 a white paper on that and they've met with DWR management  
2 a couple of times. So they're on a good track and, like I  
3 say, we'll be including more detailed presentations as  
4 they progress in that effort.

5 Maintenance Support Branch.

6 BOARD MEMBER SUAREZ: Mr. President, if I may ask  
7 a question regarding the building standards.

8 PRESIDENT CARTER: Please.

9 BOARD MEMBER SUAREZ: You know, the law requires  
10 that by the end of the year you, DWR, consult with the  
11 Board regarding the building standards changes. Is that a  
12 deadline that you foresee right now you're going to be  
13 able to meet, since your first meeting now is in late  
14 August?

15 DWR DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

16 Yes. My understanding from talking to Ricardo,  
17 they're on track to be able to do that.

18 Do you want to provide some more details?

19 DWR FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: I  
20 think that's an excellent comment. In response to the  
21 requirement that we coordinate with the Central Valley  
22 Board, I was here at the Board's meeting -- what month  
23 were we in? We're in the month of August -- well, it was  
24 here in the Board's meeting in July and briefed the Board  
25 on that and provided them a package. And I was very, very

1 happy to receive an Email from Board Supervising Engineer  
2 Dan Fua that he will be the Board's staff representative  
3 on the Technical Advisory Committee. And the invitation's  
4 open for any Board members. We are having our first  
5 meeting on August 28th. I briefed the Building Standards  
6 Commission on Wednesday on the status of everything.  
7 Everything's going pretty smoothly.

8           It is essentially in an ideal sense probably a  
9 multi-year project. But we're told by the legislation  
10 that we have to submit a package by January. But  
11 essentially based upon the Building Standards Commission  
12 adoption cycle, they really won't look at it till July.  
13 So we have the opportunity -- we will submit by January,  
14 and we'll continue to revise the input from DWR and the  
15 Technical Advisory Committee throughout the January to  
16 July process.

17           And of course the requirement is just to submit.  
18 It could take -- sometimes the Building Standards  
19 Commission because of -- it's a stakeholder-driven process  
20 with appointees and a lot of reach out to the industry, it  
21 could take one year, it could take two years, it could  
22 take three years to get these in place.

23           According to the legislation, the building  
24 standards don't apply until this Board, the Central Valley  
25 Flood Board, adopts the facilities of the Central Valley



1 Flood Protection Plan in 2012. So theoretically these  
2 standards don't go into effect until 2012. So we have a  
3 lot of -- a fair amount of time to adjust.

4 So I'm happy to come back at any time and brief  
5 you. I did not give the Board a copy of the white paper  
6 because it's still internal. We expect comments from DWR  
7 management probably by the -- maybe by early next week.  
8 And then once we send it to the TAC, I'll make sure that  
9 the Board staff gets a copy and Dan will have a copy and  
10 it can even go on the website or however you want to do  
11 it, because it will essentially be a public document. And  
12 the purpose of the white paper is essentially to give the  
13 TAC members something to kind of chew on and think about  
14 before having our first meeting to talk about potential  
15 building standards. This is for building in 200-year  
16 floodplains, protected by facilities of the State Plan of  
17 Flood Control where flood depths are expected to exceed  
18 three feet.

19 And Mr. Hodgkins and Mr. Brown gave me excellent  
20 comments last month that we are already incorporating into  
21 our thought process.

22 BOARD MEMBER RIE: Are you inviting any of the  
23 local agencies to participate in the TAC?

24 DWR FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:

25 The TAC, we've sent out invite letters right now

1 to essentially all the agencies that participate in the  
2 Building Standards Commission Coordinating Council. The  
3 legislation also called out that we need to coordinate  
4 with other agencies like Fire Marshal, Division of State  
5 Architect, Office of Statewide Health Planning and  
6 Development, Central Valley Board and others. And then  
7 we've also reached out to essentially the industry, like  
8 California Building Industries Association, Association of  
9 Building Contractors - there's a whole list of kind of  
10 industry folks.

11 So that's the focus right now. Once we get going  
12 on that, then we're going to expand to kind of  
13 community -- you know, community officials.

14 So we've already -- well, and we have invited the  
15 kind of Association of Building Inspectors to participate.  
16 So we will be -- once we kind of get a more defined  
17 package of ideas, we'll be reaching out to the  
18 communities. And we are coordinating through the Central  
19 Valley Flood Protection Plan's outreach program.

20 So right now we're focusing on kind of the  
21 agencies that deal with building codes and the industry  
22 that deals with building codes. And then once we get  
23 going on that, then we'll reach out to communities when we  
24 have something more definitive.

25 BOARD MEMBER RIE: Okay. Thanks.

1           BOARD MEMBER BROWN: Will the TAC meetings be  
2 publicly announced?

3           DWR FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:

4           Will they be publicly -- it's not really a public  
5 meeting. I mean we're not going to be checking IDs at the  
6 door. It's essentially by invitation. So it's like a  
7 working group meeting. So I'll have to take that comment  
8 into account and see how we do it. But I have no problem  
9 as long as we have room in our meeting areas. So it's  
10 essentially like a working group meeting by letter  
11 invitation.

12           BOARD MEMBER BROWN: So it may be difficult for a  
13 Board member to attend, but that should not stop you from  
14 doing what you're doing, by all means.

15           But it may make it difficult for us to attend,  
16 Mr. Chairman. I would file with the counsel on that,  
17 but...

18           PRESIDENT CARTER: I think our current guidance  
19 on attending meetings that are not publicly noticed is  
20 that up to two members can attend without public notice.  
21 More than that, we strongly discourage and actually ask  
22 that Board members refrain from attending three or more,  
23 without a publicly noticed, properly noticed meeting.  
24 That's our guidance at this point.

25           DWR FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA: I

1 believe --

2           PRESIDENT CARTER: So if there are two members  
3 that wish to attend, great. If you want to coordinate  
4 your attendance with Mr. Fua, who's the Board's  
5 representative on that, that would be great.

6           DWR FLOODPLAIN MANAGEMENT BRANCH CHIEF PINEDA:

7           Like a lot of groups of this nature, there's  
8 going to be probably a lot of detailed discussions for a  
9 couple hours at each meeting. We'll meet once a month.  
10 We'll get a lot of attendance at the first two meetings  
11 and then it will drop off to the real die-hards that are  
12 real interested in this. So we probably won't have  
13 problems having anybody walk in who wants to participate.

14          PRESIDENT CARTER: Thanks very much, Mr. Pineda.  
15 Mr. Qualley.

16          DWR DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

17          Well, there was a lot more to say on that little  
18 four-line item, wasn't there.

19          (Laughter.)

20          DWR DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

21          Maintenance activities. The fires have affected  
22 our maintenance activities in a couple of ways. Of course  
23 this is prime maintenance season. One way it affected it  
24 is with the poor water quality, obviously there wasn't  
25 going to be any more burn days authorized during that

1 period. And typically that is one of our maintenance  
2 techniques, that's cost efficient, is to burn some of the  
3 levee areas, exposing rodent holes and just making it  
4 easier to find those and do that type of maintenance. And  
5 so we've had to do more mowing. So we've had to do that  
6 type of adjustment.

7           And in another area, of course normally we use  
8 crews from the Department of Forestry or CCC's to help us  
9 in areas where we need to do hand-clearing of vegetation.  
10 And obviously they haven't been available because they've  
11 been devoted to their primary purpose on the fires.

12           So we'll probably -- we've been using more  
13 overtime on our crews, and hopefully the other -- CCC and  
14 CDF will be available later in the season, unless there's  
15 additional fires.

16           Budget impasse. We've been handling that. We've  
17 been able to, you know, internally within the Department  
18 use some alternate funding temporarily that we'll -- you  
19 know, we'll adjust everything later on after the budget  
20 passes. But it does make it a bit of a challenge for us  
21 to -- you know, to make sure that we've got enough of the  
22 materials, you know, to function. So we're hoping that  
23 the budget impasse doesn't extend too much longer.

24           Flood Project Integrity and Inspection Branch.  
25 They're starting their round of annual fall inspections

1 for the flood control structures and the channels. And  
2 one area that we've been affected there is that they're  
3 kind of restricting the inspections right now to areas  
4 they can get to and back in a day to avoid overnight  
5 stays, again part of the budget restrictions that we're  
6 under at the present time.

7 And they're also starting some waterside erosion  
8 surveys on the San Joaquin system.

9 Statewide grants branch. We closed the public  
10 comment period on July 28th and had a public hearing on  
11 July 29th, which of course you could submit additional  
12 comments during the public hearing. There was a number of  
13 comments that we received, quite a number actually. And  
14 the thinking at this point is that they probably --  
15 there's probably enough of those comments that our  
16 response to them will be substantive enough that likely  
17 we'll need to go out for a second public review period  
18 after we make those changes.

19 Flood Protection Corridor Program. I believe  
20 I -- I'm not sure if I reported on this last month or not.  
21 But, anyway, we did close escrow on a purchase for the  
22 Knaggs Ranch property up in the Elkhorn area. And one of  
23 the unique features of that is that out of the total 850  
24 acres purchased, there's a provision in the agreement for  
25 us to be able to develop 350 acres of that for advanced

1 mitigation, mitigation banking, if you will, for our  
2 maintenance activities and flood facility construction  
3 impacts. So we're, you know, getting multiple benefits  
4 for our flood program out of that purchase. And obviously  
5 the primary reason for that purchase is to, you know,  
6 remove that from, you know, being subject to development  
7 later on.

8 Flood Project Modifications and Permits Branch.

9 The four early implementation projects are moving along in  
10 various ways: Three of them in construction mode; and one  
11 of them, the setback levee in Sutter County, they won't be  
12 doing any construction until next year, but they're  
13 getting everything lined up with their right of way and  
14 utility relocations and all those activities.

15 The Three Rivers project, we've provided, you  
16 know, advanced funding for about almost \$57 million to  
17 date under the terms of the agreement for them to proceed  
18 with our right of way acquisitions and some of their  
19 initial construction.

20 As you can see from the report, Segment 1 is  
21 about a little over a third complete. And that's on the  
22 southern end. Segment 3 is almost complete. And then the  
23 setback portion in Segment 2 is about 7 percent complete.  
24 So they're moving along, moving a lot of dirt. And it's  
25 been discussed in the past about be a good idea to get out

1 and see the activities later on this summer. And I  
2 certainly think that will be interesting.

3           On the Local Levee Urgent Repair Program, Local  
4 Levee Evaluation Program, there were a couple applications  
5 that we got for urgent repairs that really don't qualify,  
6 so we've dropped those from consideration. So right now  
7 we're considering about \$10 million of \$40 million that we  
8 have received.

9           And we, you know, likely will be going out with  
10 another solicitation later on for that program.

11           Under the Delta Levees Maintenance Subventions  
12 Program. They have received for FY '08-'09 about 64  
13 applications. Total application amount is more than \$88  
14 million. And they'll -- you know, staff is going to be  
15 presenting their recommendations at the September meeting  
16 for which ones they're recommending moving forward with on  
17 the Subventions Program for '08-'09.

18           A number of things on the Flood Operations  
19 Branch. Some of this material was actually in last  
20 month's report and some of it has been updated somewhat.

21           The Joint Federal Operations Center was filling  
22 our remaining staff vacancies, and we're developing three  
23 Emergency Preparedness and Flood Response pilot projects.

24           And also getting some training activities  
25 accomplished, and modernizing the web portal. As we've



1 mentioned in the past, we'll be going -- we plan to go  
2 live with that at the same time as we put the BAM maps on  
3 the website. So we may actually make the portal live a  
4 little bit sooner than that. We may be ready with that at  
5 the end of August.

6           We've had to -- there's certain criteria that --  
7 the Public Affairs Office, they kind of oversee all of the  
8 websites for Department of Water Resources, so there's a  
9 certain look, certain feel, a certain way of communicating  
10 information that they want to make consistent among all  
11 the divisions. So there's been some modifications that  
12 have taken place based on their advice. So we're almost  
13 ready to go to make that new portal public.

14           On the Flood Operations Center Information  
15 System, I think I mentioned last month that we are doing a  
16 number of software and hardware upgrades. And we've  
17 recently created some maps. We've had quite a bit of, you  
18 know, discussions and teleconferences, and staff has gone  
19 to Inyo County to assist with both investigating  
20 alternatives for how to deal with the mud flow issues  
21 there and coordinating Office of Emergency services on  
22 various mission task orders. CalTrans provided some  
23 aerial photography to, you know, get some really good, you  
24 know, photographs so that people involved with that can  
25 figure out how to put things back in place.

1           So our focus system has been helpful in taking  
2 all that data in and for providing it in forms that are  
3 useful.

4           Emergency Response and Security Section. A  
5 number of activities. They of course have been involved  
6 with Cal OES during the '08 fires, a number of activities  
7 during June and July. And of course their primary mission  
8 at this time of year is to be doing tabletop exercises and  
9 various type of training activities. So we've kind of got  
10 our fingers crossed that we've seen the worst of the  
11 fires, which probably is an overly optimistic hope, you  
12 know, considering the extreme fire situation throughout  
13 the state.

14           But to the extent that we're involved in some of  
15 those activities - which obviously are important and need  
16 to be dealt with - it hurts us in our preparedness for the  
17 flood season. So we're trying really hard to move forward  
18 with all those training activities as well as dealing with  
19 other things that might come up.

20           Flood System Analysis Section has undertaken  
21 really a major activity. They're heavily involved in  
22 developing the Department's Delta Emergency Operations  
23 Plan. And we're working with other departments,  
24 stakeholders, other entities outside the Department and  
25 with the -- our Delta group to come up with your Emergency

1 Operations plan. And it'll -- this will -- it's kind of  
2 using as a starting point the interim Delta Ops Plan that  
3 we give a website link for you. That's almost a 200-page  
4 document that was put together a couple years ago. And  
5 we'll be expanding on that in a lot more detail. And the  
6 final version will be available sometime in 2010. But  
7 obviously as we, you know, make progress on the plan,  
8 we'll be, you know, utilizing that to making sure it's  
9 available for use.

10 Levee Evaluations Branch. I think the only thing  
11 I'll mention on that is that the non-urban levee  
12 evaluation, you know, most of the activity in that has  
13 been with regard to urban levee evaluations. But they are  
14 getting their non-urban levee evaluation project under  
15 way, and they've executed their first task orders to URS  
16 and Kleinfelder. And having -- several of us have  
17 participated in some scoping meetings for the effort, and  
18 the official kickoff is actually underway right now for  
19 the non-urban effort.

20 Didn't plan to mention anything else specifically  
21 about levee evaluations. I do want to mention that next  
22 month -- as you know, I promised that we'd periodically  
23 update you on our status of implementation of the state  
24 legislation, the six bills. We've provided that spread  
25 sheet earlier this year. And so we plan to provide an

1 update of that for you next month as well as our project  
2 status update. I like to do that on about a quarterly  
3 basis. So we'll provide that in September as well.

4 If there's any questions, I'd be happy to respond  
5 to them at this time.

6 PRESIDENT CARTER: Any questions for Mr. Qualley?  
7 Go ahead, Mr. Hodgkins.

8 VICE-PRESIDENT HODGKINS: George, your report  
9 gets better and better.

10 I do want to emphasize, and I know this was  
11 discussed in a meeting earlier this week, the Board's  
12 desire to get a more straightforward simple summary where  
13 in a glance you can sort of see whether things are still  
14 on schedule and moving forward with respect to the work we  
15 have coming up. And I think perhaps there's too much  
16 detail right now. But, anyway, I understand that there's  
17 a willingness to do that and I appreciate that. And  
18 perhaps we'll try and sit down and talk to you further  
19 about how we might do that.

20 DWR DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

21 Sounds like I'm hearing a request for sort of an  
22 executive summary that focuses on schedule-related,  
23 time-dependent issues and activities?

24 VICE-PRESIDENT HODGKINS: Yeah.

25 PRESIDENT CARTER: Mr. Brown.

1 BOARD MEMBER BROWN: Thank you, Mr. Chairman.

2 You were entirely correct as far as our  
3 participation on this committee, a board member, with  
4 regards to the Bagley-Keene Act. I was more concerned  
5 with the ex parte contact in that if the Technical  
6 Advisory Committee comes up with an issue that might come  
7 before this Board for approval, it could put us in  
8 conflict from an ex parte contact standpoint.

9 PRESIDENT CARTER: Okay. So we'll have to be  
10 cognizant of that risk as Board members do participate.

11 Okay. Ms. Suarez.

12 BOARD MEMBER SUAREZ: Thank you, Mr. President.

13 It's actually a question for Mr. Punia maybe.

14 I'm trying to get a better sense of what the  
15 process is going to be to reporting back to this Board the  
16 deliberations of the group working on the building  
17 industry changes. So I understand Mr. Fua is  
18 participating. As I read the legislation, I think it, in  
19 my interpretation, requires a formal report to this Board.  
20 And I just kind of want to clarify whether I'm incorrect,  
21 just to know that too.

22 EXECUTIVE OFFICER PUNIA: As mentioned earlier,  
23 we have nominated Dan to be Board representative in this  
24 committee. And Dan will be periodically updating the  
25 Board based upon his participation in this committee. And

1 if it's a desire, we can make it a monthly reporting. Or  
2 as needed whenever Dan evaluates, based upon where we are,  
3 he will make a judgment and brief the Board as part of an  
4 Executive Committee report or we can make a special item.

5 DWR DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

6 And Ricardo just mentioned to me that there will  
7 be regular minutes prepared from each of those TAC  
8 meetings, you know, for the benefit of the people on the  
9 TAC as well as others who have an interest in what's going  
10 on.

11 BOARD MEMBER SUAREZ: So if I may expand on that,  
12 or maybe it's just my incorrect interpretation of the  
13 statute. But I think it requires more than just getting  
14 informed. I think it requires deliberation from this  
15 Board in responding to and creating a record that we  
16 reviewed your proposal, and from our perspective as Board  
17 members and our responsibility, we agree with part of it,  
18 we believe you need more, less. So I think it's more than  
19 just getting reports back from staff.

20 DWR DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

21 Your comment is well taken. And certainly I'll  
22 take Mr. Punia up on his suggestion that we get together  
23 and talk about this in more detail how we can meet those  
24 needs of the Board.

25 BOARD MEMBER SUAREZ: Well, they're not the

1 Board's needs. They're the legislation's needs.

2 DWR DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

3 Well, yeah, I mean to meet the spirit of what the  
4 legislation has set forth.

5 PRESIDENT CARTER: Okay.

6 BOARD MEMBER RIE: Question?

7 PRESIDENT CARTER: Yes.

8 BOARD MEMBER RIE: On page 10 under "General," it  
9 says that there's an independent consulting board meeting  
10 in September 2008. What is an independent consulting  
11 board?

12 DWR DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

13 It's an independent consulting board for the  
14 levee evaluations process. And they've -- typically they  
15 have these on about a quarterly basis. And they will  
16 focus on a particular -- you know, whatever is coming up  
17 in the next, you know, couple of months in the levee  
18 evaluations process. They'll focus on that. But the last  
19 one they had was in June, and it kind of focused on the  
20 Natomas area, and I think they covered part of Sutter as  
21 well. But those are, you know, open to the public. Board  
22 members would be, you know, certainly welcome to  
23 participate.

24 BOARD MEMBER RIE: I was just curious what the  
25 purpose is.

1 DWR DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

2 Well, it's kind of a peer review. It's a  
3 gathering of, you know, the staff that's working on the  
4 levee evaluation and a number of -- all of the  
5 geotechnical consultants that are also working on the  
6 process. And there's also three individuals, preeminent  
7 geotechnical engineers that have been hired to serve in  
8 this independent consulting role.

9 So the meetings are for the purpose of the whole  
10 group briefing this three-member independent consulting  
11 board and just make sure that, you know, the practices  
12 that we're using for the levee evaluations meet the  
13 industry standards and just, you know, resolve any unusual  
14 issues regarding, you know, whatever set of evaluations  
15 are being discussed at the time.

16 BOARD MEMBER RIE: Thank you.

17 PRESIDENT CARTER: Any other questions for Mr.  
18 Qualley?

19 Thank you very much.

20 DWR DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

21 Okay. Thank you.

22 PRESIDENT CARTER: Ladies and gentlemen, we'll  
23 move on to Item 7, the Three Rivers Levee Improvement  
24 Authority Monthly Report.

25 Good morning, Mr. Brunner.



1           MR. BRUNNER: Good morning, President Carter,  
2 members of the Board. I'm Paul Brunner, the Executive  
3 Director for Three Rivers.

4           I'll refer you to our monthly report. And as  
5 you'll see as I go through the report, it's getting  
6 shorter and shorter, which is good news because that means  
7 we're making a lot of progress and the project is nearing  
8 completion, which is what we definitely want to do.

9           Under the funding, I'll highlight a significant  
10 point. I talked about it before. But the program is  
11 fully funded. That's a very significant point for us all  
12 to recognize. Both the county funding and the YCWA  
13 funding and the landowner funding is all coming through  
14 for us to move forward in our project.

15           George Qualley gave an update on the EPI and the  
16 funding that was coming -- state funding that was coming  
17 forward to us. Appreciate that a lot. And we are making  
18 good progress.

19           On levee construction, quick comment on the Yuba  
20 work. We do have a contractor under -- that we did bring  
21 on board to complete the design for the work on the Yuba.  
22 That's HDR. They did the other Yuba work that goes on.  
23 It's probably completed to date. They'll be beginning  
24 field investigative work and moving forward on that design  
25 and complete that work.

1           On the segments 1 and 3, George actually gave a  
2 really quick recap, and it's pretty close. The Segment 1  
3 work is moving forward. This is the bottom third of the  
4 levee for the work that we're working on the Feather.  
5 It's moving forward. My estimates were a little bit  
6 higher than George's being done. It's probably around 40  
7 percent now being completed. Slurry walls are completed  
8 in the area and they're putting in some water blankets now  
9 and moving forward on that work.

10           Segment 3 is nearly complete. There's very  
11 little work left on that. The only thing of really major  
12 construction that's left on Segment 3 is the seepage berm  
13 that we had talked about before. That's where we had the  
14 trench collapse last year when we were putting in the  
15 slurry wall and we put the stability berm in. And  
16 currently we now have the land and we're going to be  
17 starting construction on the larger seepage berm for that  
18 area. We did receive the encroachment permit from The Rec  
19 Board. I appreciate that very much. That should start in  
20 a few weeks.

21           On Segment 2, which is the Feather -- the setback  
22 levee, significant progress is going on that. And this is  
23 where we have the two -- bifurcated encroachment permit,  
24 Part A and Part B. And part A, we've awarded major  
25 portions of the work. We still have additional -- another

1 \$17 million worth of work that will be awarded next  
2 Tuesday at the TRLIA Board meeting, at least I presume so.  
3 And at that point, almost all of Part A will be under  
4 contract and moving forward for construction. So  
5 significant progress is going there.

6           We did extend and invite last time that I was  
7 here. And I know that there was an interest in coming to  
8 visit for the tour. And we did have conflicts with  
9 ourselves on to other folks that are visiting our area.  
10 Again extend the invite. I understand that potentially  
11 you'll be out in the September time frame. It's of great  
12 interest. A lot of levee work is going on, so I would  
13 encourage you to come. So far we've had multiple visitors  
14 come out. General McMahon has been by from the Corps,  
15 along with Colonel Chapman. We had OMB representatives  
16 from Washington come out. Yesterday we had several high  
17 level FEMA people come by and see the construction that's  
18 going on.

19           So a tremendous amount of effort's going on.  
20 Large areas are being cleared for this 300-foot swath of  
21 land for the levees going up. Slurry walls are being  
22 placed.

23           If you do come in the September time frame, we  
24 should have really fairly significant portions of  
25 embankment going up from our barrow sites. So it's really

1 worthwhile to come and see, at least from our perspective  
2 it is.

3           On the completion of the draft EIS that's out --  
4 this refers to the federal permitting process that we  
5 have -- it did go out for public review on July 11th. It  
6 closes on August 25th. We are hopeful that -- while few  
7 comments, we'll see what comes in and we'll deal with them  
8 with the Corps as they come in.

9           During that discussion with the Corps we're  
10 hopeful to get to draft EIS turned into a final by early  
11 November, hopefully sooner. But that's still a very  
12 aggressive time period. And then at the same time get the  
13 404 and 408 permit at the same time.

14           And then going down through the building permit  
15 area, we do -- if you look at the chart, it's really  
16 pretty flat. Very few building permits have been issued.  
17 That's not uncommon for the situation of economics in the  
18 State of California or in Yuba County.

19           With that, I'll stop and ask for comments -- if  
20 there are any questions or comments.

21           SECRETARY DOHERTY: I have a question for you.

22           You say that you're fully funded.

23           MR. BRUNNER: Yes.

24           SECRETARY DOHERTY: Have you been able to acquire  
25 the properties that you needed to complete the project?

1           MR. BRUNNER: We are -- the quick answer is yes.  
2 And I'll expand on that. What we have gone through is  
3 offered to all the various parcels and residents there of  
4 acquiring the property. We do have the property and the  
5 right of possession to go build the levees through the  
6 alignment that we're working on. That's the eminent  
7 domain process. So we have worked through many of the  
8 property situations. Most of them did turn out to be  
9 eminent domain. So from that aspect, we've done that.

10           We're not through the point yet of settling the  
11 cases. And that usually has taken in our experience maybe  
12 another six months to a year, sometimes more than that, as  
13 we work through economic settlements with the various  
14 property owners.

15           SECRETARY DOHERTY: So although they've given up  
16 their property and the levee is proceeding, it may be a  
17 whole other year before they get their monies?

18           MR. BRUNNER: No, it's not another year that they  
19 get their money, because once we go into eminent domain  
20 and we serve and we work through that, the money goes into  
21 the State Treasury account. And once we get possession to  
22 work on the property, they can actually draw the money  
23 from the State Treasury. So they have access to the money  
24 at that time.

25           And the question really becomes then is to

1 whether or not if we -- what is the settlement amount  
2 above that dollar amount that we already put into the  
3 treasury. So they do have access. Once we gain access to  
4 the property and start working, they can draw upon the  
5 money.

6 SECRETARY DOHERTY: But what if they don't agree  
7 with your assessment of what their property is worth?

8 MR. BRUNNER: Well, that's part of what the -- on  
9 the end process does, is it allows them to get their own  
10 appraisal. In fact, we will pay for their appraisal.  
11 They go get that. And then part of their settlement with  
12 the court, that their appraisal comes back and we take  
13 that into deliberation, attorneys meet and we work back  
14 and forth, and we try to reach agreement between what  
15 their appraisal amount is and what we have appraised the  
16 property for.

17 One of the benefits for us under the state-funded  
18 program of being in eminent domain, if there is a benefit  
19 for that, is whatever that settlement turns out to be,  
20 since it's a court settlement, the state will recognize  
21 that and pay that -- their contribution to the share of  
22 that, and will not contest what the dollar amount is as  
23 long as it's a court settlement.

24 SECRETARY DOHERTY: Okay. And so you think at  
25 this point you have all these properties tied up now?

1           MR. BRUNNER: We have the properties tied up to  
2 work through. We do have some timing. If you do come  
3 visit, there's one large property called the Naumes  
4 property that we've decided that we will take possession  
5 of the property on October 2nd. That allows them to do  
6 their farming operations and do their harvesting. They  
7 asked to do that. And with our timing and construction,  
8 we agreed to that. So I would consider that tied up  
9 because we have reached an agreement as to what will  
10 happen with that property.

11           SECRETARY DOHERTY: Okay.

12           PRESIDENT CARTER: Any other questions for Mr.  
13 Brunner?

14

15           MR. BRUNNER: I do have one last comment to make.  
16 If you could -- we've spent some time trying to make our  
17 website fairly active for the community. And if you do  
18 have the opportunity, we made some even more recent  
19 updates to it under TRLIA dot ORG where in the middle  
20 you'd go click on it and it gives the week-by-week  
21 progress of our levee work segment by segment, segments 1,  
22 2 and 3. We also will go through and give pictures of the  
23 work from week to week to try to really show the progress  
24 of what's happening to the community -- we recognize it's  
25 a major investment for the state and also for our local

1 government -- and to try to keep them involved and up to  
2 date as to what's happening.

3 Thank you.

4 PRESIDENT CARTER: Great. Thank you very much.

5 BOARD MEMBER BROWN: Perhaps Jay could send that  
6 to each of the Board members, the website, as a reminder.

7 EXECUTIVE OFFICER PUNIA: Yes, we will.

8 PRESIDENT CARTER: Okay. Ladies and gentlemen,  
9 what I'd suggest now is we skip ahead to Item 9. The  
10 consent calendar's on time. Then we can try and get a  
11 little closer back to schedule.

12 So at this time we'll move to Item 9, the Natomas  
13 Levee Improvement Program, Sacramento Area Flood Control  
14 Association. This is to consider approval of a letter to  
15 the U.S. Army Corps of Engineers requesting that the Corps  
16 initiate, in coordination with SAFCA, an environmental  
17 impact statement or environmental impact report under the  
18 National Environmental Policy Act and the California  
19 Environmental Quality Act.

20 Mr, Hester, good morning.

21 (Thereupon an overhead presentation was  
22 Presented as follows.)

23 CHIEF ENGINEER HESTER: Good morning, President  
24 Carter, members of the Board. Gary Hester, Chief  
25 Engineer.



1           This item is for the Natomas Levee Improvement  
2 Program Phase 3 Landside Improvements Project, City and  
3 County of Sacramento and Sutter County.

4           What you see on the screen is the permit phasing  
5 map for this project. And I think it might be helpful to  
6 reference this before we talk about the request for the  
7 letter.

8           These reaches that are involved in the Phase 3 of  
9 this project are the eastside portions of the Sacramento  
10 River levee as well as part of the American River levee  
11 from the confluence to the Natomas East Main Drainage  
12 Canal; the west levee of the Natomas East Main Drainage  
13 Canal; and then a portion -- up at the top of the screen,  
14 a portion of the Pleasant Grove Creek Canal west levee.

15           This phase of the project is proposed to consist  
16 of a combination of one or more flood protection measures  
17 to improve the Natomas basin perimeter levee system.  
18 These measures include raising the existing levee in  
19 place, constructing seepage berms, constructing adjacent  
20 setback levees, installing seepage walls -- or seepage  
21 cutoff walls, and relocating irrigation ditches.

22           The proposed Phase 3 levee improvements would be  
23 scheduled to be constructed in 2009.

24           And the request before you is for a letter to be  
25 sent by the Board to the Corps of Engineers to prepare an

1 environmental impact statement and environmental impact  
2 report under NEPA and CEQA to evaluate the impacts of  
3 Phase 3 project alternatives.

4           So at this point, I would like to ask whether  
5 John Bassett, the Director of Engineering for the  
6 Sacramento Area Flood Control Agency, would like to come  
7 forward and make any comments.

8           MR. BASSETT: Thank you, Gary.

9           Gary laid out a good format of our proposed  
10 phasing and our request. As I indicated on my speaker  
11 card, I'm available to take any questions of the Board.  
12 But I don't have a specific presentation for you today.

13          PRESIDENT CARTER: Okay. Thank you.

14          MR. BASSETT: Thank you.

15          CHIEF ENGINEER HESTER: So the staff recommends  
16 that the Board authorize the Executive Officer to  
17 approve -- to sign the attached letter in your Board  
18 packet to make the request of the Corps of Engineers to  
19 conduct the EIS and EIR.

20          PRESIDENT CARTER: Okay. Any questions for staff  
21 or for Mr. Bassett?

22          VICE-PRESIDENT HODGKINS: Just -- and this is the  
23 second letter. The first one I think was on the cross  
24 canal.

25          Is this letter going to take care of everything

1 along the east levee of the Sacramento River?

2 CHIEF ENGINEER HESTER: No, this is a portion.

3 And I think -- on this diagram, this area in green is --

4 and I know it's a little hard to see, but it's from Reach

5 5A down to Reach 9B is covered under this phase.

6 VICE-PRESIDENT HODGKINS: Thank you.

7 PRESIDENT CARTER: Any other questions of staff

8 or Mr. Bassett?

9 BOARD MEMBER SUAREZ: A point of clarification.

10 Is the Board helping fund the NEPA and CEQA work?

11 CHIEF ENGINEER HESTER: I believe the answer is

12 no. I believe this is -- I mean the Board is not directly

13 providing funding for this.

14 PRESIDENT CARTER: Mr. Bassett, would you like to

15 comment on that?

16 MR. BASSETT: Thank you.

17 This work is included in our early implementation

18 program application. So not knowing the nuances between

19 the Board and DWR, it is being funded by Prop 1(e) funds.

20 BOARD MEMBER SUAREZ: Thank you.

21 PRESIDENT CARTER: Okay. Any other questions?

22 Okay. We'll entertain a motion from the Board.

23 The staff recommendation is to delegate authority

24 to the Executive Officer to sign the letter in our packet

25 to the Corps requesting that the Corps initiate -- or

1 prepare an EIS/EIR under NEPA.

2 BOARD MEMBER BROWN: I'll move, Mr. Chairman.

3 PRESIDENT CARTER: We have a motion.

4 Is there a second?

5 VICE-PRESIDENT HODGKINS: Second.

6 PRESIDENT CARTER: Okay. Any further discussion?

7 Mr. Punia, would you call the role, please.

8 EXECUTIVE OFFICER PUNIA: Board Member Emma

9 Suarez?

10 BOARD MEMBER SUAREZ: Aye.

11 EXECUTIVE OFFICER PUNIA: Board Vice-President

12 Butch Hodgkins?

13 VICE-PRESIDENT HODGKINS: Aye.

14 EXECUTIVE OFFICER PUNIA: Board Member Teri Rie?

15 BOARD MEMBER RIE: Aye.

16 EXECUTIVE OFFICER PUNIA: Board Member John

17 Brown?

18 BOARD MEMBER BROWN: Aye.

19 EXECUTIVE OFFICER PUNIA: Board Member Lady Bug?

20 SECRETARY DOHERTY: Aye.

21 EXECUTIVE OFFICER PUNIA: Board President Ben

22 Carter?

23 PRESIDENT CARTER: Aye.

24 The motion carries unanimously.

25 Thank you very much.

1 All right. Moving on to Item 10, the Bear Creek  
2 and Lower Calaveras River. This is to discuss  
3 developments regarding the encroachments on the Bear Creek  
4 and Lower Calaveras River in San Joaquin County; consider  
5 appointing an encroachment enforcement hearing officer to  
6 hear evidence and prepare proposed decisions to remedy the  
7 encroachments on the Bear Creek and Lower Calaveras River  
8 project levees.

9 Mr. Hester.

10 CHIEF ENGINEER HESTER: The Calaveras  
11 encroachment issue -- the Bear-Calaveras encroachment  
12 issue began with letters from the Corps of Engineers in  
13 late March of 2007 where the local maintaining agency, San  
14 Joaquin County, received a letter of maintenance  
15 deficiency. It was one of many levee maintaining agencies  
16 that got similar letters from the Corps. And that letter  
17 gave the maintaining agency a year to correct the  
18 maintenance deficiency and come into compliance.

19 The Board staff sent an extension request letter  
20 on behalf of the county in March of this year as that  
21 one-year time period for correcting the deficiency was  
22 nearing its end. And in that extension request we laid  
23 out a series of steps that would need to be completed in  
24 order to identify which encroachments would need to be  
25 removed and which could stay.

1           The Board submitted a list of permits for  
2 encroachments in these two reaches to the Corps in late  
3 April. And in late June we sent a list of encroachments  
4 that needed to be removed.

5           The Corps had about a month to review our list of  
6 encroachments that needed to be removed and either approve  
7 or deny the remainder of the encroachments.

8           At the end of July, we were -- we took the  
9 Corps's list of what needed to come out and formulated  
10 letters to the property owners. We sent out 37 letters  
11 that pertain to 39 parcels. There was 6 parcels on Bear  
12 Creek and 33 on the Calaveras River.

13           The letters that went out primarily -- to boil it  
14 down in terms of what the issue is, on the Calaveras  
15 River, it's primarily removing fences from the levee crown  
16 shoulder or the levee slope, or in some cases they are  
17 within the ten-foot easement off the levee toe on the  
18 landside.

19           The other part of our letter was to list  
20 encroachments that there was not a current Board permit  
21 for. So we also requested that any of the other types of  
22 encroachments, such as stairs, retaining walls, irrigation  
23 systems, things of that nature, that they would file an  
24 application with the Board so we would have a valid Board  
25 permit for the remainder of the encroachments. And that

1 would be subject to review, not only of Board staff, but  
2 also would need to be endorsed by the levee maintaining  
3 agency as well as the Corps.

4           We met with the Calaveras property owners on the  
5 12th, this past Tuesday. And we had roughly 20 property  
6 owners attend that meeting and about 12 Agency people  
7 Executive Officer Punia and myself, meeting the -- and Jim  
8 Sandner from the Corps of Engineers, and representatives  
9 from San Joaquin County and the City of Stockton.

10           The letters generated quite a bit of discussion  
11 amongst the property owners, because -- to give you the  
12 full sense of this from their perspective, some of these  
13 fences had been there 40 years. They were actually in  
14 place at the time that the Federal Flood Control Project  
15 was constructed.

16           So the next steps in this. Our letters going out  
17 on August 1st gave them 30 days to respond to our request  
18 to remove the fences and apply for the permit. That  
19 doesn't mean that that work has to be completed within  
20 that 30-day time period. But they had a response form  
21 that asked them what their intent was related to the  
22 encroachments.

23           There was quite a bit of discussion. And  
24 actually we've had some internal discussion about the  
25 easement deeds that call out some of these encroachments

1 and how we should appropriately address those deeds given  
2 that the standards today would not allow a fence in that  
3 location. But at the time that the project was  
4 constructed, it was spelled out in the deed.

5 And I want to acknowledge Virginia Cahill and  
6 Nancy Finch and Ward Tabor. They have spent a fair amount  
7 of time in trying to look at the easement deed issue. We  
8 notified the property owners that that was something that  
9 we would consider in the remaining couple of weeks before  
10 they have to respond back to this request.

11 In subsequent days I've talked with the Corps of  
12 Engineers and also will be traveling back down to Stockton  
13 on Tuesday to talk with a smaller group of the property  
14 owners to talk about the deed issue itself.

15 In large numbers, out of the 33 properties on the  
16 Calaveras, there were approximately about 30 that had a  
17 fence that needed to be removed.

18 The question is, can we pinpoint whether those  
19 fences are in the location as specified in the deed? And  
20 that's what I will be discussing with the property owners  
21 again on Tuesday.

22 We think that we still have an opportunity to  
23 resolve this issue in a voluntary manner to the  
24 satisfaction of not only Board staff but as well as the  
25 Corps of Engineers and the county maintaining agency in



1 such a way that we would not need to have significant  
2 enforcement hearings that would require a hearing officer  
3 of the Board.

4           However, this item we are asking you to consider  
5 appointing a hearing officer in the event that we have one  
6 or more property owners that would need to come before the  
7 Board to provide their evidence about their encroachment  
8 and to hear staff's recommendation about what to do with  
9 that encroachment.

10           And the overall goal has been to correct this  
11 deficiency prior to flood season. And we've been working  
12 closely with the Corps district staff. The status of the  
13 extension requests that I mentioned at the beginning, it  
14 was sent from the Sacramento District to the South Pacific  
15 Division in San Francisco. They are continuing to ask for  
16 some additional information as we go through this process  
17 with the property owners.

18           Our ultimate goal, if we could get it solved by  
19 flood season, that's where we want to be. The extension  
20 request actually requested until the end of December to  
21 get this resolved.

22           So our best way forward is to get as much  
23 voluntary compliance as we can. And that's still where we  
24 are at this point.

25           And I'd be happy to answer any questions about

1 the next steps.

2 But at this point, I think next week's meeting  
3 will be very constructive. My recommendation is to take  
4 the step now to appoint a hearing officer. And that  
5 basically gives us the option going forward. In September  
6 if we need to we can begin to take the next steps, provide  
7 the proper notification to people, and begin to schedule  
8 whatever hearings that are requested.

9 SECRETARY DOHERTY: Is this the area where there  
10 was even a swimming pool encroachment?

11 CHIEF ENGINEER HESTER: There are four pools  
12 involved. There's two on Bear Creek and two on Calaveras.  
13 The pool -- in some cases the pools are very close to that  
14 ten-foot easement line. And through the inspection  
15 process of both DWR staff and support of the Board, as  
16 well the Corps inspection, neither -- none of the pools  
17 are being requested to be removed or filled in. The issue  
18 becomes, when a pool's that close and the fence has to be  
19 relocated closer to the property line, do they actually  
20 have any ability to fence it?

21 SECRETARY DOHERTY: You talk about the deeds.  
22 What specifically are in some of these deeds?

23 CHIEF ENGINEER HESTER: The deeds are pretty  
24 detailed. There's several different versions of the  
25 deeds. But it had some vegetation that was excluded. But

1 in many cases it called out what encroachments were  
2 already in place at the time. And so the question is:  
3 Are these authorized? There's also some language in the  
4 deeds that says that these items are subject to all  
5 applicable state and federal regulations. And so that is  
6 really the crux of the issue, is do we basically honor the  
7 information that's in the deeds or do we say, you know,  
8 this is nonstandard, this is not where we would be --  
9 where we would allow anybody to be in this day and age.  
10 Do we --

11 SECRETARY DOHERTY: But were those encroachments  
12 there before the project levees became project levees?

13 CHIEF ENGINEER HESTER: Yes.

14 BOARD MEMBER BROWN: I have a question, Mr.  
15 Chairman.

16 PRESIDENT CARTER: Go ahead.

17 BOARD MEMBER BROWN: What prompted this? And  
18 should this go to a hearing, who would be the plaintiff?

19 CHIEF ENGINEER HESTER: What prompted this is the  
20 Corps letter to the maintaining agency that gave them one  
21 year to correct a maintenance deficiency.

22 The letter basically ties the maintenance  
23 deficiency to PL 84-99 eligibility for repair of damage to  
24 the levee. And it also has flood insurance implications  
25 if the levee is no longer -- can be certified.

1           So the plaintiff would be a property owner that  
2   has been told to remove an encroachment, that they feel  
3   they want to make their case to the Board to keep that  
4   encroachment.

5           BOARD MEMBER BROWN: I think that would be the  
6   defendant.

7           Who filed the complaint?

8           LEGAL COUNSEL CAHILL: At the moment there's no  
9   letter even mentioning hearings yet. There would be a  
10   subsequent letter. And this would be standard enforcement  
11   in those -- starting in those cases where there is no  
12   permit and no deed right. There are some encroachments  
13   that have no basis for being there. So if we were to send  
14   a firmer letter saying, "You have to remove it," and give  
15   them the opportunity to request a hearing, I think at the  
16   hearing the Board staff would be, in effect, the enforcing  
17   power and, effectively the plaintiff. And then the  
18   landowner would be making an argument that somehow it was  
19   authorized or it wasn't needed to be removed for flood  
20   control or something along those lines.

21          BOARD MEMBER BROWN: All right. That being the  
22   case, Mr. Chairman, we would bifurcate our staff then.

23          LEGAL COUNSEL CAHILL: We think it's quite likely  
24   that if we get into formal enforcement we will have to do  
25   that.

1           BOARD MEMBER BROWN: So we would serve as the  
2 plaintiff. But the hearing officer's team would be the  
3 neutral party, with a bifurcated staff.

4           LEGAL COUNSEL CAHILL: That's why our goal is to  
5 absolutely minimize the necessity for hearing to the  
6 extent we can.

7           BOARD MEMBER SUAREZ: Mr. President, I have a  
8 question, please.

9           PRESIDENT CARTER: Go ahead.

10          BOARD MEMBER SUAREZ: Ms. Cahill, I'm trying to  
11 figure out which authorities we're relying on. Because as  
12 I read the -- when I read the regulations, there were no  
13 specific requirements set for a hearing on a party that  
14 wants to challenge a decision by staff regarding an  
15 encroachment permit.

16          So I'd just be curious to hear what regulatory or  
17 legal mechanism you're thinking of.

18          LEGAL COUNSEL CAHILL: You know, I think I came  
19 today without my regulations. There's a section in the  
20 regulations on enforcement. And that would be what we  
21 would be following. And we would be enforcing the  
22 necessity to have a permit for encroachments within our  
23 jurisdictional area.

24          BOARD MEMBER SUAREZ: Well, I agree. But I guess  
25 what I'm getting at is the process part of it. I mean it

1 leaves open -- it doesn't dictate a process, as I recall.

2           LEGAL COUNSEL CAHILL: For example -- if you're  
3 asking, for example, about the bifurcation of staff,  
4 that's not in the regulations. And to a certain extent --  
5 to a certain extent the process is in the regulations.  
6 And in terms of what needs to be in the letter to the  
7 landowner, what findings the Board has to make, that's in  
8 the Water Code, the findings that have to be made.

9           And I'm looking at Article 4 starting with  
10 Section 20 of the regulations. And so I think that's  
11 basically the process that we follow.

12           BOARD MEMBER SUAREZ: But it doesn't define what  
13 a hearing is. So on the side it says making sure that due  
14 process considerations and things of that sort are taken  
15 care of. It seems to me we're pretty -- it leads it to us  
16 to define what that process is.

17           LEGAL COUNSEL CAHILL: Yes. I mean subject to  
18 the requirements of the reg, where it doesn't specify, we  
19 are free to come up with a reasonable process.

20           BOARD MEMBER SUAREZ: Okay. Thank you.

21           PRESIDENT CARTER: Any other questions for Mr.  
22 Hester?

23           Ms. Rie.

24           BOARD MEMBER RIE: I don't have a question. I  
25 just want to make a comment.

1           I think in the case of you have residents --  
2 long-time residents who had fences or trees, whatever it  
3 was, and they were there prior to the levee being turned  
4 over to us, I would think that they would have a good case  
5 to be approved for an encroachment permit. And I'm not  
6 sure where we're going here, if we're trying to move to  
7 enforcement to remove those fences and send someone down  
8 to hear the evidence and basically deny their request to  
9 keep their fences, or if we're trying to help the property  
10 owners keep their fences. But in any case, I would think  
11 that those people down there would want to have a full  
12 hearing before the full Board rather than a member of  
13 staff making a decision whether they can keep their  
14 encroachments or not.

15           LEGAL COUNSEL CAHILL: I think your regulations  
16 provide for hearing officers. And as Member Brown has  
17 mentioned, this worked well with the Water Board. The  
18 hearing officer eventually makes a recommendation to the  
19 full Board. But to have the full Board take all the  
20 evidence if there turned out to be several of these would  
21 be really time consuming for the whole board. But the  
22 ultimate decision would be by the Board.

23           PRESIDENT CARTER: There's nothing to preclude  
24 Board members from attending the hearings.

25           LEGAL COUNSEL CAHILL: No, they may certainly

1 attend if they wish.

2 PRESIDENT CARTER: And the full Board would be  
3 making the decision. Appointing a hearing officer and  
4 having the hearings and the evidence presented in the  
5 hearings is a way of making the process more expeditious.

6 BOARD MEMBER BROWN: In fact, fellow Board  
7 members are encouraged to attend, those that can.

8 BOARD MEMBER RIE: But I'm just wondering if  
9 we're precluding members of the public from presenting  
10 evidence before the whole Board by having a hearing  
11 officer take information.

12 SECRETARY DOHERTY: Well, would the hearing be  
13 open to the public?

14 BOARD MEMBER BROWN: It is. And these are  
15 generally very formal, in that we have specific minutes,  
16 notes taken of all testimony. And that testimony then is  
17 written up and made available to Board members.

18 PRESIDENT CARTER: And is part of the evidence.  
19 So the record, the recorded hearings, all that is part of  
20 the evidence. It's considered by the Board when it makes  
21 its decision.

22 BOARD MEMBER BROWN: And the decision of course  
23 should be based upon the rules of evidence, as any  
24 decision that does come before the Board like this can be  
25 appealed before a Superior Court, I believe. Counsel, is



1 that correct?

2 LEGAL COUNSEL CAHILL: Yes, any final decision by  
3 the Board is subject to appeal --

4 BOARD MEMBER BROWN: And Superior Court will be  
5 looking at evidence and not policy statements.

6 BOARD MEMBER RIE: That doesn't really answer my  
7 question. Are we trying to preclude members of the public  
8 from presenting their case before the full Board? Are  
9 they going to have that opportunity if they attend one of  
10 these hearings with one hearing officer?

11 BOARD MEMBER BROWN: Well, when they present  
12 their evidence before the hearing officer, the full  
13 Board -- those that can attend are most welcome. Those  
14 that can't attend would have the record of the hearing  
15 available for their review. And any recommendation made  
16 by the hearing officer and their bifurcated staff may not  
17 be adopted by the whole Board. It's a recommendation that  
18 is made to the Board based upon the rules of evidence.

19 LEGAL COUNSEL CAHILL: The way I think that it  
20 worked at the Water Board and we're likely to do it here,  
21 the evidence comes in before the hearing officer. And you  
22 keep mentioning public. But mostly this will be an  
23 individual landowner would come and present evidence.  
24 Staff would present evidence. The hearing officer would  
25 write up a decision. Then if the landowner is

1 dissatisfied with the decision, typically there is a  
2 process for them to make exceptions to those parts of the  
3 decision they disagree with.

4 But they might not be able to re-present  
5 evidence. They would have to just argue based on the  
6 evidence that was already in the record when it came to  
7 the full Board. They wouldn't bring in new evidence.

8 BOARD MEMBER RIE: But could they come back  
9 before the full Board, a landowner, and make a  
10 presentation and make their case?

11 LEGAL COUNSEL CAHILL: I think so. I think  
12 probably they could make objections or a presentation to  
13 argue why the decision was wrong. But they wouldn't be  
14 allowed to bring in new evidence.

15 BOARD MEMBER RIE: So are we delegating authority  
16 to a member of staff to make a final decision on these  
17 encroachments?

18 LEGAL COUNSEL CAHILL: No, you're delegating to a  
19 Board member -- hearing officer the ability to take  
20 evidence and make a recommendation to the full Board.

21 BOARD MEMBER RIE: Okay. So they're only taking  
22 evidence?

23 LEGAL COUNSEL CAHILL: Yes, they're taking  
24 evidence and then making a recommendation to the full  
25 Board.

1           BOARD MEMBER RIE: But we don't have to agree  
2 with their recommendation?

3           LEGAL COUNSEL CAHILL: You do not.

4           BOARD MEMBER SUAREZ: Mr. President, if I may.

5           I understand that's one process, and that's a  
6 process -- and correct me if I'm wrong -- but is guided by  
7 either code or regulation or both?

8           LEGAL COUNSEL CAHILL: Yes.

9           BOARD MEMBER SUAREZ: And we don't have that  
10 here. So all I'm suggesting is, sure, there's a very  
11 rigid process that's spelled out in the Water Code for  
12 hearings that deal with, in essence, our property rights,  
13 correct?

14           But that's not what we have here. And perhaps  
15 what we need to consider is something less structured and  
16 that might fit the level of -- I mean the issue that we  
17 have at hand, which is not a property right issue, which  
18 is what you face when you deal with the Water Code at the  
19 Water Board.

20           PRESIDENT CARTER: Okay. Any other questions for  
21 Mr. Hester?

22           All right. Mr. Winkler, would you like to  
23 address the Board on this item?

24           MR. WINKLER: Good morning, President Carter and  
25 Board members. Thank you for this opportunity. I'm Steve

1 Winkler, Deputy Director of Public Works for San Joaquin  
2 County; also representing the Flood Control and Water  
3 Conversation District in San Joaquin County.

4 Just some quick comments. This is in our  
5 backyard, and it is our hornets' nest that we're about to  
6 poke at, if we haven't already started.

7 I'd like to first thank -- staff have been very  
8 diligent in -- even though it's been a methodical and  
9 drawn-out process and I've been somewhat critical of the  
10 year and a half to get us to where we are. But they did  
11 come down and pretty much present themselves before a  
12 potential lynching. And we kind of checked the parking  
13 lot for tar and feathers going into our meeting earlier  
14 this week. And we all walked out without any stretch  
15 marks or tar or feathers on us, but it was through a lot  
16 of good presentation effort.

17 It's going into a hostile crowd. We're in  
18 people's backyards, and they perceive an ownership  
19 interest. And they perceive that after 40 years, you  
20 know, they have a vested right. And so we're working  
21 closely with your staff.

22 And Jay and Gary came down and with Meegan and  
23 others from the Corps, did a phenomenal job of a tough  
24 meeting with a group of combined and aligned interests  
25 down there. They were very focused on, you know, "This

1 isn't right and we're going to fight it."

2           I think by the end of about a three-hour meeting  
3 that we were -- your staff were largely successful in  
4 turning the crowd to "We need to think about the bigger  
5 picture and community flood protection and the peril that  
6 we place the community in. Nobody's here to try to take  
7 away anyone's rights or their use of their property. But  
8 we do have to balance that against the greater community  
9 need." And, again, Kudos to staff, who did a great job  
10 presenting that, and I think starting to turn the tide  
11 with those affected property owners that at least they're  
12 beginning to see that, you know, this isn't -- we're not  
13 just out to get anybody here.

14           We do have an active time extension request  
15 pending, that Gary mentioned, with the Corps. I think one  
16 of the things that is of major concern to them is a  
17 perception on their part that there may be a lack of  
18 resolve to do what needs to be done to protect the  
19 communities and to get this done by this flood season and  
20 to take the necessary difficult actions that need to be  
21 taken. And I think Gary can speak to his perception of  
22 that. But what I'm reading is they're just not sure that  
23 the Board and its staff and the county are ready to commit  
24 to do what they feel needs to be done. And if there's a  
25 lack of resolve among those agencies, then why would they

1 want to give us more time if we're not committed to making  
2 it happen. And so we're concerned that we don't send the  
3 wrong message.

4           We heartily endorse the request and the concept  
5 of today appointing a hearing officer. I would love it if  
6 it never had -- a hearing never had to be held. But again  
7 showing resolve to the Corps that we're ready to take on  
8 the difficult issues with your Board and your Board is  
9 ready to take enforcement actions for those encroachments  
10 which are unpermitted, which can not be allowed and which  
11 threaten public safety, that we are ready to take the next  
12 step in a process that would then come back to the full  
13 Board. But if we can't even show the resolve so start an  
14 enforcement process and have a hearing officer appointed,  
15 I'm sure the Corps is going to quickly read that as, well,  
16 there really is not the interest in doing the difficult  
17 things that need to be done.

18           Lastly, we are on a tightrope here. We've got  
19 ownership interests. We've got historic easements. We've  
20 got grandfathered encroachments that were there when the  
21 project was built. And the Corps said, "They're fine,  
22 they can stay," and documented them, and then easements  
23 were set up that detailed what those were about. And it's  
24 a tightrope. Weighed against those property owner rights  
25 and how they may or may not be vested is -- we've got that

1 ticklish issue. And we, as locals, are very attune to  
2 that, because all politics become local at some point.  
3 And we're here as your flood control agency trying to work  
4 with your staff and your Board to do the right thing. But  
5 we also have to be very cognizant of, you know, local  
6 property rights as local officials. So we're on the  
7 tightrope with you.

8 But on the other hand, the Corps has already  
9 proposed to remove PL 84-99 rehabilitation assistance for  
10 both Bear Creek and the Calaveras River systems, at least  
11 the south banks. And those are State Project levees, and  
12 your Board has the statutory responsibility. And then  
13 your Board as well as we as a local maintaining agency  
14 have, by agreement, obligated ourselves to do and take the  
15 steps necessary to continue to keep these accreditable, to  
16 meet federal standards. And so we've obligated on the  
17 other side of the tightrope that we will do those  
18 necessary actions.

19 And similarly, FEMA has proposed to place some  
20 15,000 homes in the floodplain, in part because of these  
21 two sets of levees. And it's because of the maintenance  
22 deficiency. And so we need to get it right.

23 And so we encourage your Board to at least send  
24 the message that we're willing to start the enforcement  
25 process, hope we never have to use it, hope we'll get a

1 hundred percent cooperation. But in reality, in these  
2 types of issues that are four decades old in some cases,  
3 the odds are we're going to have a few individuals who are  
4 ready to dig in and get counsel and go legal and fight the  
5 process.

6           Meanwhile we're trying to get this done in the  
7 next three months to meet our Corps commitments on our  
8 timelines for relocation.

9           So again we encourage you to follow staff's  
10 recommendation. We are in absolute agreement with what's  
11 been recommended, and we're here to be part of that  
12 process and help.

13           Thank you.

14           BOARD MEMBER BROWN: Mr. Winkler, if I may.

15           Should this go to a hearing, do you believe that  
16 the defendants will be ready to present evidence?

17           MR. WINKLER: In terms of the individual property  
18 owners?

19           BOARD MEMBER BROWN: Yes.

20           MR. WINKLER: Well, it's hard for me to speak for  
21 them. They are sort of a hostile crowd. But I do believe  
22 that the homeowners' association is doing some  
23 organization, they are getting organized, they are getting  
24 and pulling and working with your staff to get copies of  
25 some of the original deeds and easements and permits that



1 were issued, as well as the O&M manuals from the Corps and  
2 what was in those as far as grandfathered permissions. So  
3 I think they're becoming prepared.

4 Certainly I think that the process is that they  
5 would get a letter giving them notice. I mean I think  
6 probably built into that is another 30-day period  
7 somewhere. So it's not like we'd be told they have to be  
8 ready next week. So I think that if they're not fully  
9 prepared, that they would possess what it takes to get  
10 there.

11 Meanwhile we've got the clock ticking on a flood  
12 season coming and the Corps looking over our shoulders as  
13 to are we moving forward with some diligence here.

14 BOARD MEMBER BROWN: Would your organization join  
15 the flood control here, our staff as joint plaintiff?

16 MR. WINKLER: I'm not sure I understand the  
17 question.

18 BOARD MEMBER BROWN: Well, would you join in on  
19 the hearing as part of the plaintiff?

20 MR. WINKLER: We would -- well, in terms of  
21 plaintiff, again there was some confusion as to who's  
22 what. But if you're asking if we would support the Board  
23 in taking enforcement actions where appropriate, that  
24 would be our position, yes.

25 Now, we might work with staff if we think that

1 maybe there's some misguided based on existing easements  
2 or whatever. We would provide staff our input as to where  
3 our local view and perhaps legal view is. But we would be  
4 at the hearings and be willing to answer questions and act  
5 as the -- you know, the state's agent as the maintaining  
6 agency. And we have a vested interest in meeting Corps  
7 standards, whatever those are determined to be.

8 BOARD MEMBER BROWN: Yeah, the term I was  
9 searching for was to intervene or be an interested party  
10 and giving testimony.

11 MR. WINKLER: Absolutely an interested party,  
12 certainly willing to give testimony. As far as taking  
13 sides, I don't see a role there where we would need to  
14 have to do that.

15 BOARD MEMBER BROWN: Well, just present evidence.

16 MR. WINKLER: Absolutely.

17 PRESIDENT CARTER: Any more questions for Mr.  
18 Winkler?

19 VICE-PRESIDENT HODGKINS: Yeah, Mr. Winkler.  
20 Since getting on the Board and understanding better the  
21 state system, it's become very apparent to me that it's  
22 not a system that responds quickly. And as I understand,  
23 that there are going to be cases where, for instance, we  
24 are going to need survey information to be able to  
25 determine whether a particular fence is the one that was

1 called out as okay to leave in the original deed or is in  
2 fact a fence at a different location. So there are areas  
3 where providing that service for the Board, doing the  
4 surveying, very difficult to do. It takes time. And I  
5 don't know whether we'll have to go out and contract and  
6 get through the process or whatever. But you must  
7 understand how bad that is at the state.

8           So are you prepared to assist us in those areas?  
9 Where as a city and the flood control agency you have a  
10 lot of knowledge about local property lines. And if you  
11 don't have survey crews of your own, which I assume the  
12 city does, you certainly have the ability to contract more  
13 rapidly with qualified local surveyors. Can you help us  
14 in those areas?

15           MR. WINKLER: Yeah. And I need to be a little  
16 cautious of not overcommitting, because we're not sure  
17 exactly what we're talking about. But by way of example,  
18 we work closely with the San Joaquin Area Flood Control  
19 Agency where two-thirds of that agency is a joint powers,  
20 both as the county and as the flood control district. And  
21 SJAFCA, which is the acronym for what I just said, the San  
22 Joaquin Area Flood Control Agency - it's kind of like  
23 SAFCA - and they have already contracted and just this  
24 week -- earlier this week submitted detailed survey for  
25 the Bear Creek problem, which is very similar to the lower

1 Calaveras, detailed topographic surveys showing where  
2 individual vegetation is, where pools are, how deep those  
3 pools are, where they fit relative to both the theoretical  
4 and the existing slopes. And so I think that's an  
5 indication of, yes, we are willing at the local level to  
6 provide assistance.

7           The problem's going to be applying that now back  
8 to these 40-year-old general, vague references to a fence  
9 that it wasn't necessarily said where the fence was. So,  
10 yeah, we can tell you where the fence is today. But --  
11 and we can provide, you know, the same review anybody can.  
12 Well, the deed was pretty vague. So is it the same fence?  
13 That's going to be where the tough part is.

14           Now, I would also say that I think at some point  
15 if we believe that an encroachment is an unacceptable  
16 today situation, knowing that there are legal  
17 ramifications on some of these grandfathered rights  
18 perhaps, at some point it's also up to I think the  
19 property owner in presenting evidence to get some detailed  
20 measurements done and present why he feels that the  
21 position that's being perhaps proposed is incorrect.

22           So I think there are two avenues there where  
23 additional detail could be brought. And we're certainly  
24 willing to help at the local level.

25           VICE-PRESIDENT HODGKINS: Well, I think -- first

1 of all, the deeds that I've looked at, only a couple, but  
2 they were pretty specific about where the fence or the  
3 retaining wall was with respect to easement lines. So a  
4 survey crew should be able to determine whether that could  
5 reasonably be considered to be that fence. If it is - and  
6 this is only my opinion - then, in effect, it's a property  
7 right we did not acquire to remove when we acquired the  
8 easement. And so in effect what the Corps's doing here is  
9 asking us to acquire additional land easements, rights of  
10 way, and relocations, which they probably have the right  
11 to do, and it should be done, but it's a different process  
12 than simply saying you have to remove this. And so we're  
13 going to need to be able to distinguish those. And that's  
14 where I think the survey information is critical.

15 MR. WINKLER: Right. And probably a part of why  
16 it's taken 18 months to get their rights. This is very  
17 complex, and there's a lot history and there's fair amount  
18 of vagueness in some of the documents. Some are very  
19 crystal clear. Others just say some vegetation and aren't  
20 as clear. And so that's where we struggle.

21 And you raised a good point, is standards then  
22 versus standards now. I'll defer to Gary. I thought I  
23 heard at our community meeting Meegan Nagy indicate that  
24 the Corps would -- potentially may - I don't want to  
25 commit anybody or anything - but potentially may be

1 willing to accept any easements that were specific to  
2 vegetation fences and encroachments as being part of the  
3 official approval process. And they've said all along  
4 that if it was in the O&M manual or has been officially  
5 and properly approved for an original permit, and they  
6 think some of these easements might fall into that  
7 category, that they would honor those.

8 I'm hoping they're not losing that resolve,  
9 because then we have a whole other can of worms, you're  
10 right, a whole different process. Your Board approves it,  
11 they disaccredit us anyway, that becomes more difficult.

12 VICE-PRESIDENT HODGKINS: But I think again you  
13 get back even to the basic question of whether or not it  
14 is something that is allowed and the easement gets to the  
15 survey data. That's going to be difficult for the state  
16 to provide and that's where we're really going to need  
17 some help.

18 MR. WINKLER: Well, we can certainly provide help  
19 with things like survey data and good definitional things.  
20 As far as an interpretation of what the state's intent was  
21 in giving an easement, we're not going to have as much  
22 information.

23 VICE-PRESIDENT HODGKINS: Well, I think it would  
24 be more along the lines of determining exactly where that  
25 fence is with respect to those kinds of questions.

1           MR. WINKLER: I think our SJAFCA team is  
2 committed to and has actually gone to their board and  
3 gotten approval of I believe \$140,000 to assist with the  
4 process on these encroachments for both Bear Creek and  
5 Calaveras.

6           VICE-PRESIDENT HODGKINS: That's helpful. Thank  
7 you.

8           BOARD MEMBER BROWN: Mr. Winkler, you  
9 mentioned -- did the Corps initiate this? You said PL  
10 84-99 is the -- did I hear you right?

11 MR. WINKLER: Under the Federal Project and State Project  
12 Levee Program, we're required to maintain the levees to  
13 federal standards, Corps of Engineers typically. And as a  
14 result of urban encroachments, vegetation and other  
15 concerns, they've come out nationwide and declared a  
16 number of Federal Project levees to be maintenance  
17 deficient. We've been working diligently over the last  
18 two years as an agency along with many other agencies to  
19 correct things that are certainly within our ability to  
20 correct, such as waterside vegetation, rodent control.  
21 enhanced efforts and the like. But now we're getting into  
22 backyards and issues of are they -- do they have a right  
23 to be there or not?

24           But pending the lifting of that maintenance  
25 deficiency finding by the Corps, they had proposed to make

1 those levees ineligible for future PL 84-99 rehabilitation  
2 assistance.

3           Now, what I've heard verbally, and I've yet to  
4 see in writing, is that pending the outcome of this time  
5 extension request that eligibility continues. But if they  
6 tomorrow, the next day, or the next month say, "No, we're  
7 not going to extend it," then I think that would be the  
8 end of that eligibility. So it could happen very  
9 suddenly. Now we have a State and Federal Project levee  
10 that is no longer being certified to provide this flood  
11 control purpose, and FEMA has already indicated they will  
12 map the area behind it back into the floodplain.

13           BOARD MEMBER BROWN: So the threat that the Corps  
14 has over us on this -- or over the landowners is that  
15 decertify the levee?

16           MR. WINKLER: You've got two threats. One is if  
17 the levees were damaged and failed in a declared disaster  
18 event, there would no federal assistance to fix it. And  
19 that's the Corps ineligibility.

20           Then the second threat -- the other foot that  
21 falls is -- and FEMA will paint it into the floodplain as  
22 part of proposed final maps and there would be mandatory  
23 flood insurance and building restriction requirements that  
24 would occur.

25           BOARD MEMBER BROWN: So they would lose their



1 federal assistance should a disaster occur in the area?

2 MR. WINKLER: Yeah, for rehabilitation I believe  
3 there would still be flood fight assistance but not  
4 repairs.

5 BOARD MEMBER BROWN: Not repairs.

6 And this was, I'm sure, expressed to the  
7 landowners during your conversation who had --

8 MR. WINKLER: Your staff did a very good job of  
9 helping turn that tide as to what's at stake here.

10 BOARD MEMBER BROWN: So tell me why you think our  
11 Board should be the lead on this.

12 MR. WINKLER: Because the state is the official  
13 sponsor and has the statutory requirement for enforcement  
14 of encroachments on the Federal Project levees and has the  
15 statutory tools to do it. We're somewhat precluded from  
16 taking that enforcement action on behalf of the state. We  
17 would be willing to support if the state was to direct and  
18 order us to do something. Then we can help in the  
19 process. But statutorily that responsibility, as we  
20 understand it, lies with The Reclamation Board.

21 BOARD MEMBER BROWN: I wonder what enforcement  
22 that this Board has to go ahead with the hearing and come  
23 up with a decision made by this Board? What enforcement  
24 powers do we have, like cleanup and abatement or fines,  
25 Ms. Cahill?

1           MR. WINKLER:   So I'll defer to your counsel.  I  
2   can't answer that.

3           LEGAL COUNSEL CAHILL:  We haven't reached a  
4   completely final conclusion yet.  But the current thinking  
5   is that we would actually go in to get a court order  
6   before we removed anything.  So that after the Board made  
7   a final determination that it had to come out, we would  
8   not just go in and take it out.  We would actually have to  
9   go to court.

10          BOARD MEMBER BROWN:  So we present our evidence  
11   to Superior Court and then Superior Court would -- how  
12   would they enforce it?

13          LEGAL COUNSEL CAHILL:  By injunction.  By court  
14   order.

15          MR. WINKLER:  And to the extent that -- I would  
16   just add - I'm not a lawyer - but I would think that once  
17   you had the court order since you have the easements, you  
18   could then either directly or direct us as the local  
19   maintaining agency under that court order to take  
20   possession of our right of way, if you want to call it  
21   that.  So it's not necessarily getting on to private  
22   property per se.  It would be exercising our rights within  
23   the Board's easements.

24          LEGAL COUNSEL CAHILL:  This is not a short  
25   process.

1           BOARD MEMBER BROWN: And a court order would  
2 determine who would pay for the cleanup?

3           LEGAL COUNSEL CAHILL: It might.

4           BOARD MEMBER BROWN: If it doesn't, are you  
5 prepared to do the cleanup?

6           MR. WINKLER: We're getting deep into a legal  
7 area. Today we're here to say we would hope we could  
8 achieve satisfactory voluntary cooperation. There may be  
9 a few where enforcement action's needed. Should those,  
10 you know, proceed to appeals and legal action to make it  
11 happen, much like eminent domain, it's a long process, and  
12 there's some legal intricacies I cannot commit today in  
13 that legal process when and where the county would act.  
14 We'd have to work closely between our counsel and yours as  
15 to where the legal authorities lie.

16           But if empowered and directed by the court or  
17 your Board, acting as your agent as the maintaining  
18 agency, that would give us some ability to strongly  
19 consider being the enforcement arm in terms of on the  
20 ground removal of encroachments.

21           BOARD MEMBER BROWN: Well, I concur. But I think  
22 you and ourselves need to think it through to the end,  
23 where we just don't get out in the --

24           MR. WINKLER: Well, we agree, and that's why I've  
25 been somewhat critical that we're 18 months into this and

1 we're still trying to figure out can we even do  
2 enforcement. And we need to have a game plan, we need to  
3 make sure it's legal, and we need to move forward. This  
4 is not the time to be timid. It's not the time to be rash  
5 either. And we've got to get it right.

6 BOARD MEMBER BROWN: I'm all right, Mr. Chairman,  
7 with appointing a hearing officer. But before you go  
8 ahead and start the hearing, I'd like to see what the  
9 process is going to look like, to where are we going to  
10 end up here and can we follow through with a court order  
11 or whatever may be necessary to have this accomplished?

12 PRESIDENT CARTER: Certainly it doesn't make  
13 sense to go through the process if the end result is  
14 there's no change.

15 BOARD MEMBER BROWN: The term that comes to mind  
16 is ready, shoot, aim.

17 PRESIDENT CARTER: Right.

18 BOARD MEMBER RIE: I have a question for staff.

19 You know, I think this process is really  
20 important and we don't want to see Stockton further  
21 impacted and have these levees be decertified. I think it  
22 would be beneficial to help them out and move this process  
23 forward.

24 However, I want to know from staff: What is your  
25 plan for staffing for this particular issue? These

1 enforcement actions, if we get there, are going to require  
2 evidence, they're going to require staff reports, they're  
3 going to require legal assistance. Staff will have to  
4 travel to Stockton and hold hearings. We're going to have  
5 to have a transcriber. So there's going to be a  
6 considerable amount of staff effort that may be involved  
7 depending on how successful you are convincing the  
8 homeowners to either get permits or remove the  
9 unauthorized encroachments.

10           Considering you're understaffed at this point and  
11 we have a huge backlog of permits and enforcement has  
12 typically been at the bottom of the priority list, what's  
13 your game plan for handling this?

14           EXECUTIVE OFFICER PUNIA: If and when the budget  
15 is passed, we are getting additional staff. I think we  
16 may be able to use some of those staff for helping us in  
17 this area. And we will continue to pursue additional  
18 staff through our budget change proposal, which we will  
19 work on fiscal year '09-'10.

20           But I acknowledge that we don't have too much  
21 staff to dedicate to this. Now, Gary is spending  
22 substantial amount of his time. Steve Dawson and Gary and  
23 John Yago both are working and spending quite a bit of  
24 time on this issue.

25           BOARD MEMBER RIE: And in terms of priorities for

1 this Board, I think our priority has to be to move past  
2 our backlog of permits. And I agree this is very  
3 important and it needs to be done, but there needs to be  
4 consideration for what our priorities are here.

5 EXECUTIVE OFFICER PUNIA: I think we'll follow  
6 the guidance from the Board. We are trying to do the best  
7 we can with the staff at hand. That's why it took longer.  
8 That's why we took a year and a half where we are now,  
9 that we were focusing on the big permits previously and  
10 that we had the same staff. So we had the permit like  
11 TRLIA, SAFCA. So we were focusing on those big permits  
12 before committing the time and effort on this.

13 So that's why it took longer than our -- and the  
14 expectation from the local community.

15 PRESIDENT CARTER: Go ahead.

16 BOARD MEMBER SUAREZ: No, it's okay.

17 PRESIDENT CARTER: I think we do need -- in  
18 consideration of this decision and going forward and  
19 whether or not to hold hearings, we have to consider the  
20 priorities before the Board. I think it's an unfortunate  
21 situation if the Board has standards and decides that  
22 because of staffing situation it cannot enforce those  
23 standards, and the public does whatever they want with the  
24 flood control system and the system deteriorates and we  
25 now have a public safety issue. That is an unfortunate

1 situation and I think that's a situation that the Board  
2 cannot afford to let happen.

3 I think there's a lot of deferred enforcement in  
4 the system. I think that the Stockton situation is only a  
5 portion of the problem. And we need to learn how to deal  
6 with all of it and we need to get our arms around it. It  
7 may mean that we take these things slowly and we don't do  
8 them all at once and we don't process them all in three  
9 months. Maybe the hearings on this particular effort take  
10 several years to get through, I don't know, as we chip  
11 away with them. But I don't think we can afford to say  
12 that we can't address it because we don't have staff.  
13 We've got to figure out how to pull together the resources  
14 and allocate staff accordingly.

15 Ms. Suarez.

16 BOARD MEMBER SUAREZ: Yes. I think it's a great  
17 opportunity for me to kind of voice a concern, because I  
18 think it goes to the issue of not only time commitment and  
19 resource commitment of our Board and our staff but also  
20 burdens that we're going to be imposing on people that are  
21 going to want us to as an appellate level kind of review  
22 of decisions, recommendations made by staff regarding  
23 these encroachments.

24 So in that sense, because we have the flexibility  
25 in terms of this body's laws and regulations on how this

1 hearing process can proceed, I think it's important, and  
2 again because of the nature of the right - although I use  
3 that with a small R - actually it's a privilege, a license  
4 that we're granting to people - that we should keep these  
5 processes less formal, not only again because of the  
6 resource commitment for this Board, but also for the --  
7 more importantly in my mind the burden we're going to be  
8 imposing, too formal of a process, too structured, having  
9 tons of requirements, it's costly. It means these people  
10 who, whether by misunderstanding or whatever, find  
11 themselves in this position are going to have to find  
12 lawyers and -- that's to me in my mind the last thing that  
13 we want.

14           We have the flexibility in our regs and in our  
15 laws, so let's take advantage of the flexibility, and deal  
16 with the problem like President Carter says - we need to  
17 start enforcing these things - but do it so in a way that  
18 is not too burdensome on the staff and, in my mind most  
19 importantly, not too burdensome on the folks that are  
20 going to come to us for review on this problem.

21           PRESIDENT CARTER: Ms. Suarez, I mean you speak  
22 of a less formal process. We have one proposal which is a  
23 formal hearing process. What would be your vision of a  
24 compromise in the process? On the one hand if a property  
25 owner challenges it, eventually what we're saying is that



1 it's going to end up in Superior Court anyway and the  
2 evidence is going to have to come before a judge and the  
3 judge is going to have to decide.

4           What's an intermediate step there that you might  
5 suggest for the Board to adopt?

6           BOARD MEMBER SUAREZ: Well, for example -- and  
7 I'm looking at the Water Board, which is the example that  
8 keeps coming up -- there you file formal briefs, you have  
9 to do counter -- you know, cross-briefing and stuff like  
10 that. We don't have time -- we don't have resources.  
11 But, more importantly, that's not a -- for the nature of  
12 the problem that we face, that is not -- that's too much  
13 process for what we have before us. So that's the sort of  
14 thing.

15           So all I'm suggesting is -- I support the idea of  
16 appointing an officer -- a hearing officer. I think it's  
17 important to send a message to folks, "We are going to  
18 start setting the processes in place to deal with this  
19 problem if you want an appellate review of what you're  
20 being told by the staff." And then take the time to  
21 develop a less burdensome process that still meets the  
22 requirements that are under the law in terms of creating  
23 the right administrative record and things of that sort.  
24 But that it doesn't become too much process for what we  
25 have at hand. I mean I'll be happy to work through that

1 and -- but I just keep hearing the Water Board, Water  
2 Board, Water Board. And to me that's too much. And we're  
3 going to get bogged down if that's the route we take.

4 PRESIDENT CARTER: Okay.

5 BOARD MEMBER BROWN: Emma, you know, brings up a  
6 good point, Mr. Chairman. Where do you draw the line?  
7 One of the things that the Water Board and our board  
8 offers that's unique is a forum for all peoples who feel  
9 they're being damaged or have a complaint to present their  
10 case. That's unique and that's important. And I don't  
11 believe you get that same kind of service or ability when  
12 you go to Superior Court. When you go to Superior Court,  
13 you obviously have to have legal counsel, generally to  
14 assist you in presenting your case. In this case, any  
15 person -- when we hold a public hearing, any person who  
16 has an issue has the opportunity to stand up before us or  
17 the hearing officer or all of us together and present  
18 their case. And sometimes that can best be done with  
19 legal counsel and other times you just hear policy  
20 statements from people.

21 And I know in the past I had the opportunity to  
22 participate in one form or another and have my mind pretty  
23 well made up by reading information that staff had  
24 presented, then only to go to the hearing and listen to  
25 public testimony and change my mind. And that's unique

1 from Superior Court. And we have that forum that we can  
2 offer the public, and it's important.

3           How formal and detailed that we make it during  
4 these hearing processes is up to us and the hearing  
5 officer. And I would hope that as we proceed in this kind  
6 of hearings, that we take that into consideration and try  
7 to make them as least formal as possible and certainly as  
8 least expensive as possible, but at the same time not to  
9 cut somebody off that has something to say, particularly  
10 the landowner. And that's unique.

11           LEGAL COUNSEL CAHILL: And I would just note that  
12 the hearings you have on permit applications are  
13 considerably less formal, you know. For example -- and  
14 the ones today are all uncontested, which makes it easier.  
15 But back earlier this year you had a SAFCA permit before  
16 you and you had Garden Highway homeowners who came and  
17 spoke and -- we can certainly come up with a process  
18 that's not as formal as the Water Board's. You're  
19 absolutely right, the Water Board requires notice and  
20 intent to appear and pre-filed testimony. And we can come  
21 up with a less burdensome process than that. And I'd be  
22 delighted to have your input.

23           PRESIDENT CARTER: Mr. Punia.

24           EXECUTIVE OFFICER PUNIA: I think Gary and our  
25 goal still is that if we can get a voluntary compliance

1 from the resident, that's the best solution. And I just  
2 want to let the Board know that the county has to step up  
3 with some funding option to compensate some of the  
4 property owners. And we will continue to seek from DWR if  
5 we have some money. Because if we are going to ask some  
6 property owners that if they have an easement and they  
7 have to move the fence and give us that easement right,  
8 then I think the property owners have the right and they  
9 will expect some compensation. That's where the local  
10 community -- local county can play a role. And we will  
11 explore our options with DWR to have some funding options  
12 too.

13 PRESIDENT CARTER: Very good.

14 So, ladies and gentlemen, the item before us is  
15 to consider appointing an encroachment enforcement  
16 officer -- hearing officer, should we need one with this  
17 area, the lower Calaveras River and Bear Creek.

18 Is there any --

19 SECRETARY DOHERTY: I would suggest -- Mr. Brown  
20 has had experience with this. I think he'd be a good  
21 nomination.

22 PRESIDENT CARTER: Okay.

23 VICE-PRESIDENT HODGKINS: I would second that, if  
24 that's a motion.

25 SECRETARY DOHERTY: Good.

1           PRESIDENT CARTER:   Okay.

2           VICE-PRESIDENT HODGKINS:   Assuming you're willing  
3   to take that on, John.

4           BOARD MEMBER BROWN:   I'd be honored to.   And at  
5   the same time, should it go to a hearing, you need to  
6   start bifurcating staff right away.   And I would strongly  
7   suggest that Ms. Cahill be the hearing officer's attorney.  
8   And then staff, you could work on developing an attorney  
9   that would keep issues separate between them.   And the  
10   engineer, you can figure out how you want to handle the  
11   engineering portion.   But there should be an engineer  
12   along with Ms. Cahill to support the hearing.

13          PRESIDENT CARTER:   Okay.   I think we can kind of  
14   discuss how we're going to do the bifurcation amongst the  
15   staff if and when we have to do this.

16          But is there any objection to me appointing Mr.  
17   Brown to be the hearing officer for this hearing?

18          Okay.   I don't -- do we need a vote of the Board  
19   or is this something the President appoints?

20          BOARD MEMBER BROWN:   Yes.

21          LEGAL COUNSEL CAHILL:   It's my understanding it's  
22   the President's a appointment.

23          PRESIDENT CARTER:   Okay.   If there are no  
24   objections, I'll go ahead and make that appointment.

25          All right.   Thank you, Mr. Brown.

1 BOARD MEMBER BROWN: Sure.

2 PRESIDENT CARTER: Okay. Let's see. What I  
3 would propose at this point, ladies and gentlemen, is --  
4 we have Item 11, Memorandum of Agreement Between the  
5 Central Valley Flood Protection Board and the California  
6 Department of Water Resources, which we just received the  
7 final copy this morning. I would suggest that we table  
8 that until after lunch, give you a chance to read that  
9 over the lunch recess, and then we can bring that back  
10 before the Board.

11 What are the -- let's see if we can get rid of  
12 the consent calendar or move the consent calendar before  
13 our lunch recess. As you'll recall, staff requested that  
14 we remove, and we did remove, Item 8B from the consent  
15 calendar to a future agenda.

16 So we have items 8A and 8C through 8P on the  
17 consent calendar.

18 We will entertain a motion to approve the consent  
19 calendar.

20 VICE-PRESIDENT HODGKINS: So moved.

21 SECRETARY DOHERTY: Second.

22 PRESIDENT CARTER: And a second -- motion and a  
23 second.

24 BOARD MEMBER BROWN: Question, Mr. Chairman. And  
25 I agree with the motion and the second.

1           But Item 80 is: Consider Approval of Permit  
2 18374 to plant native trees and shrubs and grasses within  
3 the designated floodway.

4           Now, native trees can be a whole lot of trees in  
5 the middle of a floodway.

6           BOARD MEMBER RIE: Can we discuss any of these at  
7 this point or can we pull any items off the consent  
8 calendar?

9           BOARD MEMBER BROWN: And the other one is 8P, if  
10 you look at it. They want to plant 35,000 native trees,  
11 shrubs and vines over 195 acres within the designated  
12 floodway also.

13           I mean we need to -- and if you go through the  
14 list of trees that they have there, they have the Fremont  
15 cottonwood and Western sycamore and -- I don't know where  
16 we're headed on this, but --

17           LEGAL COUNSEL CAHILL: To respond to Ms. Rie's  
18 question. You could pull those two off the consent  
19 calendar, vote on the rest, and then have staff make a  
20 presentation on those in the afternoon.

21           VICE-PRESIDENT HODGKINS: I'd like to amend my  
22 motion and move approval of the consent calendar without  
23 including 80 and 8P --

24           BOARD MEMBER RIE: And I'd like to discuss 8C.

25           VICE-PRESIDENT HODGKINS: -- and 8C.

1 Any others?

2 PRESIDENT CARTER: Okay. So we have a motion,  
3 which is --

4 BOARD MEMBER BROWN: Second.

5 PRESIDENT CARTER: -- and a second on the motion,  
6 which is to approve consent calendar items number 8A, 8D,  
7 E, F, G, H, I, J, K, L, M, N.

8 VICE-PRESIDENT HODGKINS: Correct.

9 PRESIDENT CARTER: We have a motion and a second.  
10 Mr. Punia, would you call the roll please.

11 EXECUTIVE OFFICER PUNIA: Board Member Emma  
12 Suarez?

13 BOARD MEMBER SUAREZ: Aye.

14 EXECUTIVE OFFICER PUNIA: Board Member Butch  
15 Hodgkins?

16 VICE-PRESIDENT HODGKINS: Aye.

17 EXECUTIVE OFFICER PUNIA: Board Member Teri Rie?

18 BOARD MEMBER RIE: Aye.

19 EXECUTIVE OFFICER PUNIA: Board Member John  
20 Brown?

21 BOARD MEMBER BROWN: Aye.

22 EXECUTIVE OFFICER PUNIA: Board Member Lady Bug?

23 SECRETARY DOHERTY: Aye.

24 EXECUTIVE OFFICER PUNIA: Board President Ben  
25 Carter?



1           PRESIDENT CARTER:  Aye.

2           So the motion carries unanimously.

3           So after our lunch recess we will -- what we will  
4 do is we will proceed with our agenda Item No. 11, and on  
5 with our timed items.  As we have time, we will then bring  
6 up the consent items for consideration.  So staff should  
7 make any preparations they need to present those three  
8 items, C, O and P -- 8C, O and P for a hearing after the  
9 lunch recess.

10          LEGAL COUNSEL CAHILL:  President Carter, could we  
11 ask Mr. Qualley:  Will you be able to be here after lunch?

12          DWR DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

13          Yes.

14          LEGAL COUNSEL CAHILL:  And you will be the one to  
15 make the representation for DWR about the MOA?

16          DWR DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

17          Yes.

18          LEGAL COUNSEL CAHILL:  Thank you.

19          BOARD MEMBER SUAREZ:  Mr. President?

20          PRESIDENT CARTER:  Yes.

21          BOARD MEMBER SUAREZ:  Just a warning for staff on  
22 the agreement that we received.  I'd like to know what the  
23 delegations that are being rescinded are.  So I'd like to  
24 be able to have a list of what those things are.

25          LEGAL COUNSEL CAHILL:  I am not sure we'll be

1 able to do that over the lunch. I'll have to go up to DWR  
2 Legal and see what we can find.

3 PRESIDENT CARTER: There was a -- there was a  
4 general rescission of delegation -- of prior delegations  
5 to DWR. And one of the reasons was that we couldn't  
6 develop a list of any of the -- of all the delegations  
7 that we had given them on a complete list going back in  
8 history. And so what we did was we felt that it was more  
9 appropriate to just rescind all delegations and start with  
10 a clean slate on delegations to DWR. And that's what this  
11 MOA did.

12 So it would have taken a tremendous amount of  
13 staff time to go back through all of the Board minutes and  
14 agreements to really develop delegations, particularly  
15 considering the reorganization of the Board that took  
16 place in the 1970s and into the Department and -- so that  
17 was a decision that the -- and the team made -- was the  
18 easiest and cleanest thing was to rescind any and all  
19 delegations that were made prior to DWR and then in this  
20 document make the delegations that we want to make to  
21 them.

22 LEGAL COUNSEL CAHILL: We did in fact look at the  
23 primary ones that we were aware of, and they were very  
24 dated. A number of them were referred to in the interim  
25 MOA that we did back in December, January. We looked

1 through all of those and decided what was still  
2 applicable; and if something was still applicable, we  
3 pulled it into this one, so that we would have a single  
4 free-standing document that stood on its own and didn't  
5 refer to various other documents in the past.

6 I will assemble as much as I can during the noon  
7 hour of those prior ones depending on who's available  
8 upstairs.

9 PRESIDENT CARTER: Well, even then we weren't  
10 sure we had captured all the delegations, and we didn't  
11 want to leave anything out.

12 So that was the process we used.

13 LEGAL COUNSEL CAHILL: Let me also pass one  
14 substitute page. Exhibit 2 in the copy you got today says  
15 "Working Draft," and this one just says Exhibit 2. We've  
16 eliminated "Working Draft" because this is the final.

17 PRESIDENT CARTER: Okay.

18 LEGAL COUNSEL CAHILL: So it's just to substitute  
19 page 14.

20 PRESIDENT CARTER: Okay. So, ladies and  
21 gentlemen, let's take an hour recess. We'll be back here  
22 at 1 o'clock to reconvene.

23 Thank you.

24 (Thereupon a lunch break was taken.)

25

1                               AFTERNOON SESSION

2                   PRESIDENT CARTER:   Good afternoon, ladies and  
3 gentleman.   Welcome back to the Central Valley Flood  
4 Protection Board meeting.

5                   As you recall, prior to our lunch recess we had  
6 just approved certain items of the consent calendar.   And  
7 we were going to move on to Item 11, Memorandum of  
8 Agreement Between the Central Valley Flood Protection  
9 Board and the California Department of Water Resources.

10                  This is to delegate the authority to the Board  
11 President to execute a Memorandum of Agreement between the  
12 Board and the Department of Water Resources to work  
13 cooperatively and collaboratively to develop and implement  
14 an integrated state flood management program for the  
15 Central Valley, while preserving their independent  
16 authorities and jurisdiction as set forth in the law.

17                  Ms. Cahill.

18                  LEGAL COUNSEL CAHILL:   Thank you, President  
19 Carter.

20                  This agreement, you received a copy this morning  
21 but it's essentially the same as what was in your packet  
22 last month.   It hasn't changed in any significant way.   If  
23 you want me to highlight some of the primary provisions, I  
24 can.   But if you're comfortable that you already know what  
25 they are, I won't.   Let me know what you would all like.

1           Maybe before we do that, at the very end last  
2 month, it was in your packet, I ran through the main  
3 provisions, and the Board asked whether DWR was prepared  
4 to sign it, the DWR Director. And no one was able to  
5 represent that he would sign it if you approved it.

6           Today, George Qualley is here to make that  
7 representation on the part of DWR. So why don't we do  
8 that first.

9           PRESIDENT CARTER: Okay. Good afternoon, Mr.  
10 Qualley.

11           DWR DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

12           Yes, President Carter, members of the Board.

13           As you well know, we've had many very productive  
14 and collaborative sessions going through various versions  
15 of the MOA and have, you know, worked pretty diligently to  
16 come up with language that, you know, was appropriate for  
17 the continuing relationship with the Department of Water  
18 Resources and the Central Valley Flood Protection Board.  
19 And we have reached language that is acceptable. And I  
20 can represent on behalf of the Department of Water  
21 Resources that we are prepared to sign the MOU that is  
22 before you today.

23           PRESIDENT CARTER: Okay. Thank you.

24           Any questions for Mr. Qualley?

25           Okay. Very good.

1 Does the Board want Ms. Cahill to highspot the  
2 elements of the agreement or changes that occurred since  
3 last month?

4 BOARD MEMBER SUAREZ: Changes would be good.

5 PRESIDENT CARTER: Do you want to just go through  
6 some of the changes from last month.

7 LEGAL COUNSEL CAHILL: You know, the only changes  
8 are wording changes. We've sometimes took "State Plan of  
9 Flood Control" and replaced it with "State Flood System."  
10 Typically we took out the word "control" and put in the  
11 word "management".

12 But in terms of provisions, I think these are the  
13 same provisions with the same numbers that you saw last  
14 month. We really didn't make any substantive changes.

15 There is one exhibit -- there's Exhibit 1 that's  
16 to be attached. It's a DWR organization chart. It wasn't  
17 copied with this. It would be inserted before Exhibit 2.  
18 In the document we refer to the organization chart and say  
19 but if we refer to a particular title, now and later they  
20 rename the positions that -- the intent is that whatever  
21 function that position has now, the agreement will go with  
22 the function no matter what they call the entity.

23 The goal here was to provide for the working  
24 relationship while respecting the Board's independence  
25 under the legislation. The recitals are basically

1 background material.

2           The "key agreements" section starts on page 4.

3 The overall bottom line is the Board and DWR will exercise  
4 their best efforts to work cooperatively and  
5 collaboratively to develop and implement an integrated  
6 state flood management system, while preserving their  
7 independent authorities. DWR will continue to provide  
8 programmatic and administrative support to the Board.

9           The Board is responsible for hiring its own  
10 executive officer. The Executive Officer will be in  
11 control of Board's direct staff. And we have brought  
12 what's called -- we're going to -- the agreement says we  
13 will pursue a reorg -- DWR will pursue a reorganization  
14 through appropriate channels to bring the Floodway  
15 Protection Section in as direct staff to the Board. Those  
16 are people like Steve Dawson in the back row and some of  
17 your other direct staff. Functionally that's already  
18 happened. Functionally they're already acting as direct  
19 staff.

20           Paragraph 10 says you can retain independent  
21 legal counsel. You have.

22           You will decide on real estate matters, meaning  
23 you'll decide what projects to approve that require real  
24 estate. DWR will do all the real estate support services.

25           The Project Integrity and Inspection Branch will

1 remain under DWR, but it will serve both DWR and the  
2 Board. And you will cooperate to develop priorities for  
3 inspections. And it is possible that in a future BCP we  
4 will get inspectors added to our direct staff, and then  
5 they will serve both entities of it as well.

6 Paragraph 17 talks about cooperation in  
7 developing the budget.

8 Paragraph 19 and Appendix 2 set up some times by  
9 which DWR is to present materials to the Board. But  
10 recognizing that can't always be met, we have the  
11 possibility of a waiver, but the Executive Officer does  
12 that.

13 BOARD MEMBER RIE: Can we go back to paragraph  
14 11.

15 LEGAL COUNSEL CAHILL: Sure.

16 BOARD MEMBER RIE: Okay. So in terms of grant  
17 deeds, as an example, are we delegating to DWR to accept  
18 or transfer grant deeds?

19 LEGAL COUNSEL CAHILL: Yes, I think we are. Once  
20 the Board determines that the property should be acquired  
21 or that the project would be approved, it would require a  
22 property, then DWR would actually do the negotiation and  
23 acquisition of property. So that's down about line 6.

24 BOARD MEMBER RIE: What about signing the grant  
25 deeds?



1           LEGAL COUNSEL CAHILL:   Yes.

2           BOARD MEMBER RIE:   DWR would sign; it would no  
3 longer be the Board President?

4           LEGAL COUNSEL CAHILL:   I don't think it is now.  
5 I think this is current practice continued.

6           BOARD MEMBER RIE:   I think the Board President  
7 and the Secretary sign all the grant deeds currently. And  
8 that's in accordance with the Water Code.

9           LEGAL COUNSEL CAHILL:   Jay, do you know? I was  
10 informed that this is how we're doing it now.

11          EXECUTIVE OFFICER PUNIA:   I don't have the  
12 firsthand knowledge of who signs the grant deed. But we  
13 have -- anyone from real estate here -- no.

14          I'm not in a position to answer this at this  
15 time. But we can check it out and then, Teri, let you  
16 know.

17          BOARD MEMBER RIE:   I just think there's some  
18 conflicts here with what's in the Water Code on the  
19 matters of real estate. But you can get back to us on  
20 that.

21          LEGAL COUNSEL CAHILL:   So are you suggesting we  
22 put this over another month?

23          BOARD MEMBER RIE:   Perhaps.

24          LEGAL COUNSEL CAHILL:   I mean that would be fine  
25 if that's what you want to do.

1           BOARD MEMBER RIE:   Okay.   But you can continue.

2           LEGAL COUNSEL CAHILL:   Well, I'd pretty much  
3 finished what I had to say.   Both the Executive Committee,  
4 President Carter and Vice-President Hodgkins, were  
5 involved in the negotiations leading to this version of  
6 the MOA.   And they may have some comments.

7           We were trying to take control of our own direct  
8 staff, which we hope to be augmenting as years -- in  
9 future years, and to also define that we'll cooperate on  
10 setting priorities for inspectors.

11           And I guess I don't have anything else to say.

12           PRESIDENT CARTER:   Yeah, I think -- I don't have  
13 a definitive answer on your question, Teri, as to whether  
14 or not the President and the Secretary sign the grant  
15 deed.   I honestly do not recall signing any.   I don't --  
16 maybe you as secretary did and recall that.

17           SECRETARY DOHERTY:   Why don't we call the real  
18 estate people.   They would know.

19           PRESIDENT CARTER:   Yeah.

20           LEGAL COUNSEL CAHILL:   You know, Nancy Finch is  
21 out at a lunch meeting.   If she comes back this  
22 afternoon -- we could put this over till the end of the  
23 meeting possibly and possibly get an answer for you by the  
24 end of the day.

25           PRESIDENT CARTER:   Okay.

1           LEGAL COUNSEL CAHILL:   Why don't we do that.

2           VICE-PRESIDENT HODGKINS:   But I have a question.

3           Irrespective of what the Water Code says, can the  
4 Board delegate this authority to the Department of Water  
5 Resources by the Board's approval of this agreement?  
6 Because I think this is one where there were -- many of  
7 these provisions were in prior delegations, but I don't  
8 know specifically if grant deeds were or weren't. Part of  
9 the thinking was when you're ready to execute a deed, why  
10 should you have to get the deed signed by Ben and/or the  
11 Secretary -- and the Secretary, who are not here in  
12 Sacramento, and that at the very least means mailing or --  
13 it just didn't seem like it was expedient.

14          BOARD MEMBER RIE:   Well, I think whether it's  
15 expedient or not, the property is held in the name of the  
16 San Joaquin Drainage District. And we are the officers of  
17 the San Joaquin Drainage District and DWR is not. So it  
18 doesn't seem logical to me that DWR would sign for title  
19 on a document which they have no title. I don't think we  
20 can delegate that.

21          But if we had someone from real estate, perhaps  
22 they could clarify.

23          PRESIDENT CARTER:   Okay. So if there are no  
24 objections, we can table this till later on this  
25 afternoon. Is that okay?

1 Emma, did you have a comment or --

2 BOARD MEMBER SUAREZ: No, I'm fine. Thank you.

3 PRESIDENT CARTER: Okay.

4 BOARD MEMBER RIE: I was just wondering if  
5 anybody had the chance to find the current delegations.

6 LEGAL COUNSEL CAHILL: No, I -- there was no one  
7 up at DWR Legal Office during the lunch hour. But I left  
8 a message for one of the attorneys. And hopefully he will  
9 get it and send them down.

10 BOARD MEMBER RIE: Okay.

11 PRESIDENT CARTER: Okay. Any other questions,  
12 comments?

13 So we'll continue this till this afternoon.

14 On to Item 12, the American River Watershed  
15 Common Features Project. This is Jacob Lane Levee  
16 Improvement Reaches A and B.

17 To consider approval of resolution 08-17 to adopt  
18 the Mitigated Negative Declaration, approve the Mitigation  
19 Monitoring Plan, and approve the project.

20 Ms. Bronson.

21 This is not Ms. Bronson.

22 MR. BROWN: My name is Kris Brown, going over the  
23 Jacob Lane project. I'm with DWR.

24 (Thereupon an overhead presentation was  
25 Presented as follows.)

1 MR. BROWN: It's WRDA 99, American River Common  
2 Features Project.

3 Here's the -- let's see, this won't work here,  
4 will it? Nope.

5 The location map is next to the American River in  
6 Sacramento off of Arden Way. And Jacob Lane's one of the  
7 streets that goes right through the center of the two  
8 reaches there, just upstream from Sac State.

9 There's two reaches, Reach A and B. And on the  
10 north end of Reach B is Arden Way. And you can see the  
11 Sheriff's Training Facility there at Reach B. And Reach  
12 A, Rio Americano High School, and the American River  
13 running just south of that.

14 --o0o--

15 MR. BROWN: Here's the construction plan from the  
16 Corps with the sheets on it.

17 --o0o--

18 MR. BROWN: Reach A's going to have 5,000 feet of  
19 levee that's being raised approximately one foot --  
20 elevation raise. It's going to vary depending on  
21 elevation currently. It's being raised to meet the  
22 hydraulic requirements of 160,000 cfs plus three foot of  
23 freeboard from the Folsom Dam releases with the new  
24 spillway.

25 Approximately 700 feet of bike trail will be

1 protected in place and 500 feet will be removed and  
2 reconstructed.

3 --o0o--

4 MR. BROWN: There's a typical levee profile.

5 I was going to use my laser pointer, but I guess  
6 I can't do it in here. There's no way that will work, is  
7 there?

8 EXECUTIVE OFFICER PUNIA: You can use the mouse.

9 MR. BROWN: I can use the mouse?

10 EXECUTIVE OFFICER PUNIA: Yeah.

11 MR. BROWN: Okay. So you can see the undulating  
12 line there. That's the existing top of levee. And then  
13 the straight line above it is the final top of the levee.  
14 And along the right side you can see these are one-foot  
15 increments. So it's not being raised very much, only  
16 about a foot.

17 --o0o--

18 MR. BROWN: And here's a typical cross-section  
19 from the construction plans. And the dotted line is the  
20 existing ground, and then there's the final surface.

21 --o0o--

22 MR. BROWN: And moving on to Reach B. There's  
23 the Sheriff Training Facility. And the different sheets  
24 from the Corps's plans.

25 Reach B is going to be 6,400 feet of levee crown.

1 It's going to be widened by at least eight feet to meet  
2 the minimum levee crown width requirements of 20 feet for  
3 the -- set for the Army Corps of Engineers.

4 --o0o--

5 MR. BROWN: Approximately 260 feet of bike trail  
6 will be removed and reconstructed.

7 There's three inactive petroleum pipelines owned  
8 Kinder Morgan run along the landside of Reach B,  
9 three-inch, four-inch, and ten-inch diameter. The  
10 three-inch and four-inch diameter pipes go to McClellan  
11 Air Force Base and the ten-inch pipe goes up to Rocklin.  
12 But they're inactive at this time.

13 And they cross under the levee at Reach B behind  
14 the Sheriff's Training Facility.

15 The levee work in the pipeline crossing area more  
16 than likely won't be done this year. It's going to be  
17 protected in place. And we're going to do site visits and  
18 determine by potholing exactly where the pipelines are  
19 located and probably finish that work next year, and do  
20 everything except the pipeline crossing area.

21 --o0o--

22 MR. BROWN: And here's Reach B's cross-section.  
23 It's right here -- you can't see it very well, but it says  
24 minimum of -- oh, I've been told the pipeline work will be  
25 done this year, as long as we can do it. We have to do

1 some field determinations.

2 MR. KOCH: I'm sorry. Eric Koch, Full Projects  
3 Office Chief, Department of Water Resources.

4 Annalena was going to -- is going to be  
5 presenting the CEQA document. And in there it describes  
6 the pipeline and the mitigation measures.

7 There is no issue with the pipeline at this point  
8 in time. We were able to work everything out. So I  
9 apologize. Apparently Kris didn't get that information.  
10 He's been busy this week.

11 But the pipeline will be constructed this year  
12 along with the rest of the project -- or that levee  
13 section over the pipeline will be constructed this year.

14 So I just wanted to point that out. There was a  
15 mistake on the slide.

16 MR. BROWN: Okay. So Reach B is just a levee  
17 widening. And here's the top minimum width of 20 feet  
18 required by the Army Corps of Engineers.

19 And so Reach A's just a levee raise and Reach B's  
20 a levee widening. So it's a very simple project.

21 And that's all I had. And Annalena's going to go  
22 over environmental biological issues.

23 BOARD MEMBER BROWN: You said it's designed for  
24 150,000 cfs?

25 MR. BROWN: 160,000, plus 3 foot of freeboard.



1 BOARD MEMBER BROWN: Oh, okay, 160.

2 MR. BROWN: Any other questions?

3 MS. BRONSON: Well, good afternoon, Mr. President  
4 and members of the Board. I'm here to ask you to approve  
5 Resolution 817.

6 First I want to apologize for the late delivery  
7 of some of the information and changes in the Mitigated  
8 Negative Declaration. I want to assure you that your  
9 staff and staff for the Corps have worked incredibly hard  
10 to make it possible for you to consider this project  
11 today. It has been a challenge and it's been a very short  
12 timeline. But we wanted to assure that everything  
13 complied with CEQA and everything was in order for you  
14 before we ask you to approve it.

15 There has been a couple of small changes in the  
16 Negative declaration from the one you received in your  
17 package to one we have recently shown you.

18 The first one is an increase in the mitigation  
19 needed for Valley Elderberry Long-Horn Beetle by .6 acres.  
20 All this mitigation will take place at a mitigation bank  
21 called French Camp. And that's being taken care of by the  
22 Corps.

23 The other addition to the Mitigated Negative  
24 Declaration is a subject called private and public  
25 utilities. But spells out this mitigation measure would

1 really -- it's in the Corps of Engineers regulations that  
2 they will stop work if they find something untoward. I  
3 just wanted to include that in our Negative Declaration as  
4 a mitigation measure.

5           Also, we have identified a mitigation area for  
6 Oak trees. One, over 1700 plants need to be planted to  
7 mitigate for native oaks and Sycamores that will have to  
8 be taken out during the course of the project.

9           And I think I provided you with a Google or  
10 picture and an arrow that points to the site. It is an  
11 area that's owned by the Sacramento/San Joaquin Drainage  
12 district. It was acquired for mitigation for common  
13 features some years ago. There is an area left on it that  
14 hasn't been used, and that's where we plan on planting  
15 these Oak trees.

16           So are there any questions from the Board at this  
17 time?

18           PRESIDENT CARTER: Ms. Bronson, I have a  
19 question -- two questions.

20           I assume the photograph you're referring to is  
21 this one?

22           MS. BRONSON: Yeah. And I think I -- is that the  
23 color picture? Yeah. And there was an arrow I tried to  
24 show the general area between the highway where we are  
25 mitigating.

1           PRESIDENT CARTER:  So this mitigation site is  
2 between Interstate 80 and --

3           MS. BRONSON:  -- 160.

4           PRESIDENT CARTER:  So it must be Business 80 --

5           MS. BRONSON:  Yeah.

6           PRESIDENT CARTER:  -- and the railroad crossing?

7           MS. BRONSON:  Yeah.  It's quite a busy area right  
8 there.

9           PRESIDENT CARTER:  And is this the same site that  
10 has been used -- the Corps has a mitigation site here as  
11 well.

12          MS. BRONSON:  Yeah, it's --

13          PRESIDENT CARTER:  Is it separate?

14          MS. BRONSON:  Yeah, the area is owned by the  
15 Board.  Portions of it had been used for mitigation  
16 previously.  There is a remnant that hasn't been used, and  
17 that's what we're planning on using.

18          PRESIDENT CARTER:  But is there -- so what I'm  
19 referring to as the Corps site, is that a site that's  
20 owned by the Board or by the Corps?

21          MS. BRONSON:  The site is owned by the Board.

22          PRESIDENT CARTER:  Okay.  Because there was a  
23 site in here where we were -- a couple years ago Western  
24 Area Power Authority was doing some elderberry  
25 mitigation --

1 MS. BRONSON: I don't think this is that site.

2 PRESIDENT CARTER: -- in a similar site, and I  
3 thought that was a Corps site.

4 MS. BRONSON: No, that site was further down in  
5 the parkway near -- it's not this site.

6 PRESIDENT CARTER: All right. My second question  
7 is: Where is the French Camp mitigation bank?

8 MS. BRONSON: Well, it's somewhere in San Joaquin  
9 County. And I don't know the exact location. Maybe  
10 there's someone from the Corps here that can answer that  
11 question. I think it is somewhere near Stockton.

12 And that has been approved by Fish and Wildlife  
13 Service to mitigate that. Although it is admittedly some  
14 distance away, but Fish and Wildlife Service has agreed to  
15 that.

16 PRESIDENT CARTER: Okay. Is that mitigation site  
17 also in a -- it's a riparian area that gets flooded or --

18 MS. BRONSON: You know, I don't -- know very  
19 little about this mitigation bank. But I know if it is a  
20 bank for elderberries, then it has been approved by Fish  
21 and Wildlife Service and everything is taken care of and  
22 it covers our mitigation obligation for the elderberries  
23 beetle at this time.

24 PRESIDENT CARTER: Okay. Can you give the Board  
25 an idea of what the purchase price of this 2.4 -- or I

1 guess -- is it 3 acres now?

2 MS. BRONSON: Yeah, 2.4 acres is the latest  
3 issue. And it usually runs about 80 to \$90,000 an acre.

4 PRESIDENT CARTER: 80 to 90 an acre. Okay.

5 All right. That's all I have.

6 Are there any other questions for Ms. Bronson?

7 Okay.

8 MS. BRONSON: Anybody else want to comment?

9 Okay. Well, then I'd like to ask the Board to  
10 consider approval of Resolution 817 to approve the  
11 Mitigated Negative Declaration, the mitigation monitoring  
12 plan that you recently got delivered to you, and to  
13 approve the project.

14 PRESIDENT CARTER: Okay.

15 BOARD MEMBER SUAREZ: Mr. President, I so move.

16 PRESIDENT CARTER: Okay.

17 BOARD MEMBER RIE: Second.

18 PRESIDENT CARTER: We have a motion.

19 Do we have a second?

20 BOARD MEMBER RIE: Second.

21 PRESIDENT CARTER: And we have a second.

22 Any further discussion?

23 BOARD MEMBER RIE: Just a comment.

24 PRESIDENT CARTER: Yes.

25 BOARD MEMBER RIE: We really appreciate the fact

1 that you gave us the final initial study. That was really  
2 nice. And I think this is the first time we've been far  
3 enough in advance where we got to see the findings from  
4 the Corps. So I really appreciate your putting that in  
5 there

6 MS. BRONSON: Okay.

7 BOARD MEMBER RIE: Thank you.

8 PRESIDENT CARTER: Any other questions,  
9 discussion?

10 Mr. Punia, would you call the roll, please.

11 EXECUTIVE OFFICER PUNIA: Board Member John  
12 Brown?

13 BOARD MEMBER BROWN: Aye.

14 EXECUTIVE OFFICER PUNIA: Board Member Lady Bug?

15 SECRETARY DOHERTY: Aye.

16 EXECUTIVE OFFICER PUNIA: Board Member Emma  
17 Suarez?

18 BOARD MEMBER SUAREZ: Aye.

19 EXECUTIVE OFFICER PUNIA: Board Vice-President  
20 Butch Hodgkins?

21 VICE-PRESIDENT HODGKINS: Aye.

22 EXECUTIVE OFFICER PUNIA: Boar Member Teri Rie?

23 BOARD MEMBER RIE: Aye.

24 EXECUTIVE OFFICER PUNIA: Board President Ben  
25 Carter?

1           PRESIDENT CARTER:  Aye.

2           The motion carries unanimously.

3           Thank you very much.

4           MS. BRONSON:  Thank you.

5           PRESIDENT CARTER:  All right.  Ladies and

6 gentlemen, we're on to informational briefings.

7           At this point we have the Federal Emergency  
8 Management Agency Flood Map Modernization Program and its  
9 implications for areas where levees are declared deficient  
10 by the U.S. Army Corps of Engineers.

11          Good afternoon, Ms. Schaefer.

12          (Thereupon an overhead presentation was

13          Presented as follows.)

14          MS. SCHAEFER:  Hi.  I'm Kathy Schaefer.  I'm an  
15 engineer with FEMA Region 9.  And I want to thank you for  
16 giving me an opportunity to present before the Board.

17          My presentation today is going to be in three  
18 parts:  Briefly give an overview of the Map Mod Program,  
19 something that you may have seen about a year ago when  
20 Eric Simmons spoke with you.  I'll give you an update on  
21 our schedule and where we are in the production phase of  
22 it.  And then just talk briefly at the end about  
23 certification and levees.

24          So with that, again I have with me Eric Simmons,  
25 my colleague.  We're the two engineers who are handling

1 much of the mapping for northern California at this time.

2 --o0o--

3 MS. SCHAEFER: Whenever I have an opportunity to  
4 speak with public officials, I always like to take a  
5 minute just to remind everyone that, you know, one of the  
6 most fundamental obligations of government -- any  
7 government is to protect its citizens from natural and  
8 man-made disasters. And in the area of flood, there are  
9 two basic ways that you can do it. You can either work to  
10 keep the floodwaters away from the people or you can work  
11 to keep the people away from the floodwaters.

12 And at the federal level that is handled by the  
13 Corps of Engineers, who work to keep the floodwaters away  
14 from the people by building dams and levees and dikes and  
15 things that you're all very familiar with.

16 --o0o--

17 MS. SCHAEFER: And the part of keeping the people  
18 away from the floodwaters falls with the Corps of  
19 Engineers -- or with FEMA. We work to encourage people to  
20 elevate their homes, to use wisely the floodplain. And so  
21 that is how we work together to support the local  
22 governments in flood management.

23 --o0o--

24 MS. SCHAEFER: And in FEMA, we use implements of  
25 the National Flood Insurance Program. And it's part of



1 kind of a three-legged stool approach. We create maps  
2 that show areas of high, low and moderate hazard. And  
3 then we turn those maps over to the local communities.  
4 And we ask that the local communities, who have the  
5 land-use authority, we ask that they implement regulations  
6 that don't make the situation worse, that they encourage  
7 wise building within the floodplain, that they require  
8 homes to be elevated or that they take actions to minimize  
9 unwise construction in the floodplain.

10 And in exchange, we make flood insurance  
11 available to anyone and everyone who wants it. And it's  
12 important to remember that 20 years ago the public  
13 agencies -- or the private agencies got out of the flood  
14 insurance business. It was not available to anyone. And  
15 that's why the federal government stepped in and created  
16 the National Flood Insurance Program. That's why it's  
17 administered through FEMA, so that there is an opportunity  
18 for anyone who wants flood insurance to have it provided  
19 to them.

20 --o0o--

21 MS. SCHAEFER: And as part of -- as I said, part  
22 of what we do is create maps that show areas of high, low  
23 and moderate risk. And unfortunately over the period of  
24 20 years our maps became a little out of date. And they  
25 were originally created as paper products. And now that

1 we have a digital age, it became apparent that we needed  
2 to update and move into the digital world. So five years  
3 ago FEMA initiated the Map Modernization Initiative.

4 --o0o--

5 MS. SCHAEFER: And it was an initiative to  
6 convert our supply of paper maps into new digital, more  
7 easy to use map products. So converting these paper maps  
8 that you may all be familiar with into a digital product.

9 --o0o--

10 MS. SCHAEFER: It was a five-year program. And  
11 the goals were that 92 percent of the population  
12 nationwide would have a new digital product. 2008 is  
13 indeed the last year of funding, so we're moving into the  
14 closing of the Map Mod Initiative.

15 --o0o--

16 MS. SCHAEFER: And what we are rolling out with  
17 this map modernization is an upgrade of all the paper  
18 firms to a new digital format. We're creating one  
19 county-wide seamless flood layer in each county. We're  
20 retrofitting the floodplain boundaries to more current  
21 base maps. We're incorporating letters of map change and  
22 we're converting to the new digital datum.

23 --o0o--

24 MS. SCHAEFER: And all of that goes into a  
25 digital database. And what you see on a paper map is

1 really cartographic representation of a digital database.  
2 And so we are still producing the hard copy FIS reports,  
3 we're still producing the hard copy digital -- or hard  
4 copy firm handles.

5 But one of the things that we're doing that's  
6 relatively new is we're making available the national  
7 flood layer. And the beauty of the national flood hazard  
8 layer is that if there is a letter of map change approved  
9 and issued today, tomorrow morning you can go to the FEMA  
10 website and download the national flood hazard layer and  
11 it will show that change sewn into the new map. And it's  
12 all available on line.

13 --o0o--

14 MS. SCHAEFER: And, again, we're continuing to  
15 produce the flood insurance studies, that is, the text  
16 report, the foundation of our mapping. Those flood  
17 insurance studies are augmented with the flood insurance  
18 rate map panels, and it's all backed up by a DFIRM  
19 database.

20 --o0o--

21 MS. SCHAEFER: And in addition, we're also  
22 producing files in a KMZ layer so that folks can download  
23 it and use it with Google Earth and do all kinds of  
24 wonderful things. And for me I think this is one of the  
25 most exciting areas of what we're doing. Because in the

1 past when you look at a paper map, you don't really see  
2 the floodplain. You just see your house in relation to a  
3 line, and there's a tendency to argue about, yes, I'm in,  
4 or, no, I'm out, and go back and forth. Whereas when you  
5 look at a floodplain and you see the -- you're able to  
6 move up the stream, you can see, "Wow, maybe I'm a lot  
7 closer than I thought it was." And so it helps in the  
8 communication, it helps the public folks to be able to  
9 convey the message to the local parties.

10 So these are all products that are being made  
11 possible by the Map Mod Initiative.

12 --o0o--

13 MS. SCHAEFER: You may have seen this slide.  
14 This was one talks about how we are -- the schedule in  
15 which we are moving forward and how we are going through  
16 processing these. We approached it in three -- northern  
17 California mapping change in three chunks. Phase 1 was  
18 the Bay Area. It's highlighted in yellow. Phase 2 was  
19 the San Joaquin area, highlighted in green. And Phase 3,  
20 which we are kicking off shortly, is the blue area.

21 So we've tried to do them for a production  
22 standpoint. And for management purposes we've tried to  
23 make the conversions in three big chunks.

24 --o0o--

25 MS. SCHAEFER: And I'm going to show this slide

1 to just highlight the fact that the conversion process is  
2 a very slow and deliberate process, and particularly if  
3 there are map changes. If we are adding new special flood  
4 hazard areas, it does take a long time. We will start --  
5 in this example we would start an outreach meeting in  
6 February, telling communities that we're coming to down  
7 and we're doing new maps. It might be four or five months  
8 before a provisionally accredited deadline occurs. And  
9 then there's a series of months for us to produce the  
10 DFIRM database. And it takes almost a year before we  
11 would issue a letter of final determination. The letter  
12 of final determination is the letter that establishes the  
13 formal effective date of the map. It is always issued six  
14 months in advance. And it, as I said, sets the final  
15 effective date of the map.

16 So the process from start to finish is not a  
17 quick one. It takes well over a year in many cases.

18 --o0o--

19 MS. SCHAEFER: And so I want to just show this to  
20 you. You may have also seen this. This is talking about  
21 where we were.

22 In 2006, we rolled out new preliminary maps in  
23 the Bay Area.

24 In 2007, we started to roll out new preliminary  
25 maps in the San Joaquin area. And then the procedure

1 memos hit FEMA headquarters, instructed us to look more  
2 closely at levees and the issues of whether levees were  
3 certified. So we pulled back a bit. We started our  
4 outreach meetings.

5           And in 2008, we've been issuing revised  
6 preliminary maps. And we're in the process of finalizing  
7 those revised preliminary maps in the Bay Area and in the  
8 San Joaquin area. And shortly we will be kicking off the  
9 effort for northern California. We'll be issuing new  
10 preliminary maps hopefully sometime in FY '09 for many of  
11 the counties in northern California. And then ultimately  
12 leading in the 2010-2011 time frame to a final effective  
13 map for all the counties in northern California.

14                               --o0o--

15           MS. SCHAEFER: And just one of the issues I think  
16 of concern to you all is the FEMA's Procedure Memo 43.  
17 And I wanted to just kind of go over that. I know you've  
18 seen this before. But Procedure Memo 43 was the memo that  
19 headquarters FEMA issued to the regions that instructed us  
20 to look at levees and then allowed us to provisionally  
21 accredit levees -- where certification was in question,  
22 we're allowed to provisionally accredit levees for about  
23 two years -- for two years.

24           The PAL, although it was helpful, is a bit  
25 confusing. And I'm showing this screen to show that there

1 are five scenarios for a provisionally accredited levee.

2 --o0o--

3 MS. SCHAEFER: Some levees are non-Corps levees.

4 And there are some options for those. We refer to those  
5 as A-1 and A-2 types of levees.

6 Some levees are Corps levees, and they were  
7 eligible to be provisionally accredited.

8 Some had deficiencies that we allowed for a  
9 one-year maintenance correction period.

10 And then there were levees that the Corps showed  
11 as not having adequate protection.

12 So there's, you know, five different PM 43  
13 scenarios that come into play when we go into a county at  
14 the first time to talk about the -- to do the digital  
15 conversion.

16 --o0o--

17 MS. SCHAEFER: To help everyone understand this

18 very complicated process and to help work with the

19 communities as we go through this, we have been

20 outreaching extensively to the communities that we work

21 with and when we go into a new map. We start by

22 developing a with-levee and behind-levee mapping analysis.

23 We partner very closely with the Corps of Engineers to get

24 an understanding of where the Corps levees are, what the

25 status is for the Corps levees. We create GIS levee

1 status and tables. We share it on a public website. We  
2 conduct meetings and work extensively with the local  
3 staff.

4 --o0o--

5 MS. SCHAEFER: And as part of that, as I said, we  
6 are creating levee maps and tables that identify line by  
7 line where every levee is and what kind of levee it is.  
8 Is it a Corps levee? Is it a non-Corps levee? Does it  
9 provide protection? Does it have a maintenance  
10 deficiency? All of those are depicted in a levee status  
11 table and map. And along with that we create tables that  
12 show who owns it, what's the status. And, again, it's a  
13 very tedious, very line-by-line process. But we've been  
14 working extensively with the San Joaquin folks and will  
15 continue to do that for the Sacramento folks.

16 --o0o--

17 MS. SCHAEFER: We also have an outreach website  
18 that local officials are aware of that they can go to for  
19 additional information. And the URL for that is included  
20 on this slide.

21 --o0o--

22 MS. SCHAEFER: And so anyone who has a question  
23 about the status of a particular levee in any particular  
24 county that we're currently working in can go to this  
25 website and get more information.



1 --o0o--

2 MS. SCHAEFER: In addition, we've worked  
3 extensively with our congressional representatives,  
4 briefing the congressional offices. And if congressional  
5 staff want additional information, we make ourselves  
6 available.

7 We also have the Corps -- are fortunate enough to  
8 have the Corps attend most of these meetings with us, so  
9 that we try to present a unified, consistent message to  
10 the community. And we will continue to do that as well.  
11 We're fortunate to have Judy Soutiere with the Corps, who  
12 is our liaison, and she's been fabulous. We also have  
13 Ricardo Pineda from DWR. He's been with us at a lot of  
14 these meetings. And so we're really fortunate to have a  
15 really wonderful team to collaborate with as we go through  
16 this process.

17 --o0o--

18 MS. SCHAEFER: And just to kind of give you some  
19 of the numbers of the meetings we had, in Phase 1 and  
20 Phase 2, the Bay Area and the San Joaquin area, we held  
21 over 70 outreach meetings from November '06 to January  
22 '08. And we are now in the process of looking at the  
23 scheduling for the Phase 3 communities, which will be the  
24 communities in the Sacramento Valley, the communities  
25 shown in blue on this slide.

1 --o0o--

2 MS. SCHAEFER: As part of these outreach  
3 meetings, again we -- or in addition to the preliminary  
4 outreach meetings, we're also now starting to kick off  
5 post-preliminary outreach meetings, which are meetings to  
6 educate local officials on how to use these new digital  
7 products, how to download the files, where they can be  
8 found, and how do you incorporate them in like a Google  
9 Earth presentation, how to educate their citizens on where  
10 to find the data, how to use the data. And so we're  
11 continuing our outreach efforts in that way.

12 --o0o--

13 MS. SCHAEFER: I want just to show you the net  
14 result of that so far, is that Region 9 leads the nation  
15 in the number of provisionally accredited levees. You can  
16 see that we have -- we offered the PAL to over 1300 -- for  
17 over 1300 different levee segments, and we have about  
18 400 -- over 400 signed PAL agreements so far. And again  
19 we haven't moved into northern California yet.

20 --o0o--

21 MS. SCHAEFER: I also want to show you this slide  
22 because I think it's very -- it's very telling on a number  
23 of fronts. According to the best available data, there  
24 are in Phase 1 and Phase 2, again the Bay Area and San  
25 Joaquin, we found over 6,000 miles of levees. But of

1 those 6,000 miles of levees, only -- you know, a very  
2 small percentage, only 196 miles were proposed for full  
3 accreditation.

4 And again we offered -- in this number we offered  
5 688 levee miles PAL agreements, and, you know, only a very  
6 small percentage of them were signed and came back.

7 So it's kind of a -- I think it's very  
8 interesting that we have so many levees in California and  
9 folks are stepping up to the plate looking seriously at  
10 them and making decisions about whether or not they really  
11 can certify those levees.

12 --o0o--

13 MS. SCHAEFER: As we go through this, you know,  
14 everyone from the local officials to the state officials  
15 are stepping up to the plate and recognizing the  
16 responsibility that they have and that public safety  
17 depends on depicting the risks with the levees. And so I  
18 just can't say enough good things about the local folks  
19 that we've been dealing with who have taken the initiative  
20 to work with us and to try to improve their levees.

21 --o0o--

22 MS. SCHAEFER: Just as a highlight and going back  
23 to where we are with these, is that the mapping  
24 regulations were codified in 1986 for mapping around  
25 levees. We're using the same regulations that were

1 promulgated in 1986 today. And those regulations require  
2 that FEMA can only accredit those levees that meet and  
3 continue to meet minimum design and operation standards.

4 --o0o--

5 MS. SCHAEFER: For a levee to be shown as  
6 providing protection on a FEMA map, it must demonstrate  
7 that it can withstand stability requirements; it must be  
8 demonstrated that it has adequate freeboard, that all the  
9 closure devices function properly, that there is adequate  
10 interior drainage, that operation and maintenance plans  
11 are adequate, and that the levee is being maintained by a  
12 public entity.

13 --o0o--

14 MS. SCHAEFER: Procedure Memo 43 came out and  
15 recognized that it takes time for communities to get the  
16 documentation certifying that all those conditions had  
17 been met. So the Memo 43 allows FEMA to provisionally  
18 accredit a levee for two years while the community works  
19 to gather and collect all the information they need to  
20 fully certify a levee for the conditions that I just  
21 talked about.

22 Procedure memo 43 allows FEMA to issue a  
23 preliminary map. And that map allows -- that allows us to  
24 show the area as -- show the levee as provisionally  
25 accredited.

1           Levees that are given a PAL -- before we can give  
2 a PAL there must be no evidence from the Corps or from a  
3 state agency or other source that indicates that the levee  
4 does not meet FEMA standards.

5           Procedure Memo 43 just says nobody knows for sure  
6 whether the levee meets FEMA criteria but that there's no  
7 reason not to believe it, and we would like two years for  
8 us to gather all the information.

9                               --o0o--

10          MS. SCHAEFER: The levee owner must be willing to  
11 state to the best of their knowledge that the levee does  
12 meet FEMA standards or FEMA criteria.

13                               --o0o--

14          MS. SCHAEFER: Levees that are given a PAL, again  
15 the landward side of the levee will be shown as a Zone X  
16 for two years. If it does not meet the PAL requirements,  
17 then the area landward of the levee is shown as a Zone A.  
18 And in the FEMA Flood Insurance Zone A, insurance is  
19 required if you have a federally backed mortgage.

20                               --o0o--

21          MS. SCHAEFER: So the question is: What does it  
22 mean to certify a levee? A levee -- is a statement from  
23 the certifying entity that it provides protection from the  
24 1-percent-annual-chance flood, that the data is accurate,  
25 that there was analysis performed in accordance with sound

1 engineering practices. And it's important to note that  
2 when an entity certifies the levee, they're not certifying  
3 or warranting the performance of the levee. They're  
4 certifying that the data is accurate and to the best of  
5 their knowledge through engineering analysis, this levee  
6 meets all the FEMA criteria.

7 --o0o--

8 MS. SCHAEFER: And again who certifies a levee?  
9 FEMA does not certify levees.

10 --o0o--

11 MS. SCHAEFER: That information comes from the  
12 local community. FEMA is responsible for the mapping  
13 standards, for depicting the risk zone appropriately  
14 behind levee, for accrediting or not accrediting levees as  
15 appropriate. FEMA is not responsible for designing,  
16 operating, maintaining, or certifying levees.

17 --o0o--

18 MS. SCHAEFER: That responsibility lies with the  
19 community or levee owner. The community or levee owner is  
20 responsible for certification, for operations and  
21 maintenance, and for any outreach that may be needed to  
22 the public.

23 --o0o--

24 MS. SCHAEFER: And I just want to show this, that  
25 the PAL agreement form is an agreement that the local

1 entities, when they request a PAL, they sign that state to  
2 the best of their knowledge the levee meets the criteria  
3 of 44-6510 and has been maintained in accordance with an  
4 operation and maintenance plan. They're also saying that  
5 the documentation to show that the levee meets the  
6 criteria 44-6510 will be provided within a two-year  
7 period.

8 --o0o--

9 MS. SCHAEFER: And for any other additional  
10 information or further, we have the website where we make  
11 all of this information available, along with the PAL  
12 forms, the levee maps. All of that is available on this  
13 website.

14 So with that, if there are any questions, I'd be  
15 happy to entertain them at this time.

16 PRESIDENT CARTER: Thank you, Ms. Schaefer.

17 Are there any questions for Ms. Schaefer?

18 BOARD MEMBER RIE: Yes. I have a question.

19 Currently we have, I think you said, 1300 PALs.

20 MS. SCHAEFER: Currently we have -- let me go  
21 back to this agreement. Currently we have 428 signed PAL  
22 agreements.

23 BOARD MEMBER RIE: Okay. So of that 428, and  
24 there's a two-year timeline, if all of the data comes in  
25 in the second year and we're needing to make some repairs,

1 and the Board has approved those repairs on the levees, if  
2 there's an underseepage problem, and we have issued a  
3 permit for the repairs but they're not quite done by the  
4 time the two-year extension expires, would FEMA be willing  
5 to extend the timeline?

6 MS. SCHAEFER: We're not allowed to extend the  
7 timeline. The PAL offer period is for two years. And if  
8 we do not have full certification within a two-year  
9 period, we have to move forward to accurately show the  
10 flood risk.

11 BOARD MEMBER RIE: Okay.

12 PRESIDENT CARTER: Any other questions.

13 VICE-PRESIDENT HODGKINS: With respect to PALs, I  
14 think your slide said if you offer a PAL, it means that no  
15 local, state, or the Corps have suggested that the levees  
16 didn't provide base flood protection; is that correct?

17 MS. SCHAEFER: It means that there is no -- that  
18 there's no agreement by all parties that the levee does  
19 not provide protection.

20 VICE-PRESIDENT HODGKINS: I'm sorry. Say again.

21 MS. SCHAEFER: We have offered the PAL to only  
22 those levees where communities have requested the PAL and  
23 where they've been able to show that there is no  
24 definitive information that the levee does not meet FEMA  
25 criteria.



1           VICE-PRESIDENT HODGKINS: Okay. So I guess I'm  
2 trying to understand what that means. What's definitive  
3 information?

4           MS. SCHAEFER: A levee that is not in the -- that  
5 has been removed from the PL 84-99 program, when we first  
6 move into a community and are discussing the PAL offer  
7 process with the community, if there is a levee that is  
8 not in the -- that has been removed from the PL 84-99  
9 program, we are prohibited to offering the PAL for that  
10 particular levee.

11           But if there is -- and that's the reason for the  
12 PAL, if there's nothing that shows that the levee does not  
13 provide protection, and if the community is willing to say  
14 that they, and I use the term, in their heart of hearts  
15 believe it meets all of the criteria, then we offer the  
16 provisionally accredited levee status and allow them two  
17 years to get the documentation together to get it fully  
18 certified.

19           VICE-PRESIDENT HODGKINS: Okay. FEMA's criteria  
20 doesn't give specific engineering numbers. So the Corps  
21 may have a number for exit gradient, and other engineers  
22 may disagree with those numbers. So if the Corps thinks  
23 it doesn't meet the standard for underseepage, but there  
24 are other credible engineers who think it does, then FEMA  
25 will issue a PAL?

1 MS. SCHAEFER: Yes. We try to work with the  
2 communities and -- first we try to come to consensus. We  
3 would like both parties to come to an agreement. And  
4 we -- because it is the community that ultimately is  
5 responsible for a lot of this and for maintaining the  
6 regulations, we sometimes grant favor to the local  
7 community. But, yes, that is an issue that we are  
8 wrestling with.

9 VICE-PRESIDENT HODGKINS: Okay. The second  
10 question: If I wanted to understand a county-by-county  
11 schedule for northern California, the 22 counties, is that  
12 on the website?

13 MS. SCHAEFER: The schedule is not on the website  
14 at this time because we haven't pinned it down exactly.  
15 But we are starting with some meetings in Sacramento and  
16 Placer County on the 19th and 20th of this month. We're  
17 in the process of developing that schedule and hope to  
18 have it out public in a month or so. And when it is  
19 public, it would be available on the website that I  
20 referenced.

21 VICE-PRESIDENT HODGKINS: Okay. Thank you.

22 PRESIDENT CARTER: Any other questions for Ms.  
23 Schaefer?

24 BOARD MEMBER SUAREZ: Mr. President, I have a  
25 comment more than a question.

1           PRESIDENT CARTER:   Okay.   Go ahead.

2           BOARD MEMBER SUAREZ:   I actually -- this is an  
3   excellent presentation and I appreciate you coming down  
4   and sharing this with us.

5           And I would ask, Mr. Punia, perhaps some --  
6   figure out a way to link this on our website so people  
7   that come into visit our website can access not only the  
8   presentation but even the link that she's referring to, I  
9   think would be --

10          EXECUTIVE OFFICER PUNIA:   So you're proposing,  
11   Emma, to link their website or the presentation itself?

12          BOARD MEMBER SUAREZ:   I'd say both.

13          EXECUTIVE OFFICER PUNIA:   Both?   Yeah, we can do  
14   that.

15          BOARD MEMBER SUAREZ:   Thank you.

16          MS. SCHAEFER:   Thank you.

17          PRESIDENT CARTER:   Ms. Schaefer, maybe with --  
18   I've been trying to understand this very slide here.   And  
19   if we look at the column that's labeled "Approximate  
20   Miles," it starts out with 6,017, which is the total  
21   mileage, more or less, in the 22 counties in the northern  
22   California and Nevada?

23          MS. SCHAEFER:   It's -- yes.

24          PRESIDENT CARTER:   Okay.   And then the next one  
25   is -- the 822 are the levees that are within the Corps's

1 program. So they're federally sponsored or they're part  
2 of the Corps's program.

3 MS. SCHAEFER: Right.

4 PRESIDENT CARTER: And then it says that there's  
5 5,259 that are not currently accredited. Those would be  
6 essentially those levees that are not in the Corps's  
7 program?

8 MS. SCHAEFER: Yes, yes.

9 PRESIDENT CARTER: Or they are Corps levees that  
10 are not accredited?

11 MS. SCHAEFER: Actually they could be both. They  
12 are just levees that are not shown as providing protection  
13 on a FEMA flood insurance rate map

14 PRESIDENT CARTER: Okay. And then I'm assuming  
15 that the 113 are levees that are certified and -- levees  
16 certified and full accreditation planned. So what we're  
17 saying is that of this 6,000-odd levees, there are only  
18 113 that are certified or have full accreditation planned?

19 MS. SCHAEFER: That's correct.

20 PRESIDENT CARTER: And then there's 196 that are  
21 proposed for full accreditation or provisional  
22 accreditation?

23 MS. SCHAEFER: That's correct.

24 PRESIDENT CARTER: That's in addition to the 113?

25 MS. SCHAEFER: Yes.

1           PRESIDENT CARTER: Or are there some of those 113  
2 that are --

3           MS. SCHAEFER: No, those are two separate pots,  
4 if you will. So there's 113 that are fully accredited  
5 and --

6           PRESIDENT CARTER: So this full accreditation  
7 planned, which is a portion of this 113, is not part of  
8 the full accreditation or provisional accreditation that's  
9 proposed?

10          MS. SCHAEFER: Right, right. There are two sets  
11 of -- two separate pots, if you will.

12          PRESIDENT CARTER: Okay. And then at the  
13 bottom -- or next to the bottom -- or actually at the  
14 bottom it's levees to be de-accredited is the 458 miles?

15          MS. SCHAEFER: Right, that's correct.

16          PRESIDENT CARTER: So there's a huge portion in  
17 there that is in limbo really. There are no plans for  
18 accreditation, but there are no plans for  
19 de-accreditation.

20          MS. SCHAEFER: There's -- they are levees that  
21 may be having a one-year maintenance. We offered a  
22 one-year maintenance period, and some of them fall in that  
23 category.

24          So, yeah, some of these numbers are a bit  
25 confusing. And they're again approximate miles, so it's

1 important to -- but just -- the purpose of this slide is  
2 to -- I wanted to give you an order of magnitude, if you  
3 will, an indication of the percentages of levees in the  
4 different categories.

5 PRESIDENT CARTER: Yeah. Well, if I'm reading  
6 this right, it says that there are approximately 1100 or  
7 1200 miles that are either accredited or plan to be  
8 accredited or are offered a PAL. And then there's about  
9 460 that are to be de-accredited.

10 MS. SCHAEFER: Right.

11 PRESIDENT CARTER: So that comes up to around,  
12 let's say, 1700 miles of the 6,000-odd miles.

13 And so there's about -- what is that? -- 3300  
14 that is -- or is that 4300 that is kind OF in limbo?

15 MS. SCHAEFER: Those levees are -- often times  
16 they're ag levees. They're levees that they -- somebody  
17 has identified them as a levee. Either they're shown on  
18 an old FEMA map, maybe DWR when they did their levee  
19 inventory identified them as levees. But, you know, on  
20 closer inspection, they may not be providing protection,  
21 they're not -- in other words there isn't a FEMA --  
22 there's a FEMA special flood hazard area on both sides of  
23 the levee.

24 So the vast majority of the levees in California  
25 are levees that are not shown on a FEMA map as providing

1 protection.

2 BOARD MEMBER BROWN: Do you make a distinction  
3 between urban levees and non-urban?

4 MS. SCHAEFER: No, no.

5 BOARD MEMBER BROWN: I wonder whether the -- does  
6 the Calaveras and the Bear Creek levees -- are they in  
7 there somewhere?

8 MS. SCHAEFER: What's that? Which ones?

9 BOARD MEMBER BROWN: I wonder --

10 PRESIDENT CARTER: Well, it depends on whether  
11 they're on the 22 counties, because this is only 22  
12 counties in northern California and Nevada.

13 MS. SCHAEFER: Which levees are you talking  
14 about?

15 EXECUTIVE OFFICER PUNIA: In San Joaquin County,  
16 Bear Creek and Calaveras River.

17 MS. SCHAEFER: The Bear Creek and Calaveras  
18 levees are listed in this list. The Bear Creek levees I  
19 believe are currently shown as providing protection on the  
20 FEMA flood insurance rate map. And we're in the process  
21 of working with the local agencies about getting them  
22 fully accredited. So I believe they were offered a PAL,  
23 from the top of my memory. I could be wrong.

24 BOARD MEMBER BROWN: That's new news, isn't it?

25 EXECUTIVE OFFICER PUNIA: Because we have asked

1 the Corps to grant us the extension. And until the Corps  
2 makes a determination whether they will grant an extension  
3 or not, I think FEMA will consider that they are providing  
4 the protection.

5 BOARD MEMBER BROWN: So we have two years then.

6 EXECUTIVE OFFICER PUNIA: We have -- I think we  
7 asked the Corps to give the grant to this year, and that  
8 we will meet the Corps standard by end of this year. And  
9 the Corps came back and they are saying they will give  
10 the -- if they approve the extension, they will only give  
11 the extension beginning of the flood season, which is  
12 November 1st.

13 BOARD MEMBER BROWN: Okay.

14 PRESIDENT CARTER: Any other --

15 MS. SCHAEFER: The folks at San Joaquin County  
16 have been really terrific to work with. So they have by  
17 far the most levees and they have levees of every  
18 different PAL category. So it's been quite a challenge  
19 for all of us to keep them straight and to do that. And  
20 they've done a really wonderful job.

21 PRESIDENT CARTER: Very good.

22 I echo the Board's comments. Thank you very much  
23 for sharing this with us. It's good information.

24 I hope that we can continue to get updates from  
25 you in the future as you work through your process. And



1 if there's anything that we can do to help in terms of  
2 facilitating the process or providing a forum for public  
3 comment, let us know.

4 MS. SCHAEFER: I appreciate that. Thank you very  
5 much.

6 Thank you again for the opportunity.

7 PRESIDENT CARTER: Thank you.

8 Okay. Ladies and gentlemen, we'll move on to  
9 Item 14, which is the U.S. Army Corps of Engineers  
10 Vegetation Standards for the Treatment of Vegetation  
11 Within the Flood-Damage-Reduction Systems.

12 I saw Mr. Sandner -- Mr. Sandner, good afternoon.  
13 Welcome.

14 (Thereupon an overhead presentation was  
15 Presented as follows.)

16 MR. SANDNER: Good afternoon, President Carter  
17 and members of the Board. My name is Jim Sandner. I'm  
18 the Chief of Operations and Maintenance Branch, Sacramento  
19 District, U.S. Army Corps of Engineers. And I've come  
20 here today to kind of just continue our discussion that we  
21 began two meetings ago regarding questions that the Board  
22 had with vegetation and certain construction contracts  
23 that are ongoing on the Sacramento and San Joaquin River  
24 flood control systems.

25 --o0o--

1           MR. SANDNER: As you folks are well aware, it's a  
2 fairly extensive system in the Central Valley. It  
3 stretches from Shasta Lake all the way to the Tulare Lake  
4 basin. There's about 2300 miles of levees in the Central  
5 Valley. Approximately 1600 of those are project levees or  
6 local flood protection projects where the Corps of  
7 Engineers has responsibility for ensuring that operation  
8 and maintenance is being performed in accordance with O&M  
9 manual.

10                               --o0o--

11           MR. SANDNER: I want to bring your attention to  
12 the picture on this slide. And this is a good example of  
13 a levee that is being well maintained and has very few  
14 encroachment problems. There were a couple of large trees  
15 at the bottom of the slide that would be of concern. But  
16 generally this is a very well maintained levee on this  
17 slide.

18                               --o0o--

19           MR. SANDNER: As we have tried to emphasize over  
20 our meetings with the Board and with the collaborative  
21 flood management group, the Corps's primary concern is  
22 public safety and ensuring that the flood control system  
23 provides a level of protection that it was designed for.

24           As you look at our design criteria and how it  
25 applies to vegetation, our engineering manual that is

1 specifically written for establishing criteria for the  
2 design and construction of levees mentions vegetation  
3 specifically in those standards. And it basically says  
4 that vegetation can be incorporated in the project as long  
5 as it doesn't diminish the integrity and the functionality  
6 of the embankment system or impede ongoing operations,  
7 maintenance, and flood-fighting capability.

8           So vegetation isn't something that is prohibited  
9 in the flood control system. It's something that the  
10 Corps looks for opportunities to incorporate so that it  
11 functions within the system and ensures that there's a  
12 certain level of public safety and that certain vegetation  
13 values are incorporated into the project.

14                               --o0o--

15           MR. SANDNER: In the Sacramento and San Joaquin  
16 systems, one of the primary reasons that we have a  
17 revision to the O&M manual that goes all the way back to  
18 1949 is that small shrubs and small trees provide erosion  
19 control along the waterside slope of the levee.

20           In more recent years, we have seen that  
21 environmental enhancement is very important in riparian  
22 systems and also water quality.

23                               --o0o--

24           MR. SANDNER: We also have a need to preserve  
25 endangered species. Vegetation can also screen

1 undesirable features of a flood control project. And it  
2 also can create suitable environment for human use.

3 I would again draw your attention to the slide --  
4 the picture on this slide as we look at this portion of  
5 the floodway. Here is the levee over here to the left on  
6 this slide. Very well maintained on the waterside slope  
7 of the levee. And we can see that we have a very nice  
8 bench and some significant riparian vegetation within the  
9 floodway.

10 This is probably the optimum type of system that  
11 we would like to have on the waterside of the levee.

12 As you look at the landside, that is a little  
13 more problematic. We have homes that have been built very  
14 close to the levees. We can see some landscaping and  
15 large woody trees that are encroaching within the 10- or  
16 15-foot vegetation free zone that the Corps of Engineers  
17 has a standard for.

18 --o0o--

19 MR. SANDNER: Vegetation also has some risks  
20 associated with it. Primarily the root systems can create  
21 paths for seepage in piping. If you have large trees,  
22 they can be subject to wind throe, get blown down, have  
23 root balls that are pulled out. And you have associated  
24 erosion where those root balls are pulled out of the levee  
25 prism. You also have a problem if the tree is a large

1 high tree, where it could fall in the river and not  
2 necessarily be washed away. It would just kind of sit  
3 there and cause an eddy to be created by that trunk and  
4 root system and exacerbate erosion on the levee prism.

5 Vegetation also can be a real hindrance to flood  
6 fighting. It also can provide habitat for rodents that  
7 create many of the voids in our levee systems.

8 It also has a problem with our inspections. If  
9 the vegetation becomes so dense, it's very, very hard to  
10 conduct inspections to see whether you have erosion or  
11 voids in the levee prism.

12 Also, large trees can cause the levee prism to  
13 become an unstable structure.

14 --o0o--

15 MR. SANDNER: There is a whole system of  
16 regulations and guidance with respect to the design of  
17 levees and also the standards associated with levees in  
18 the flood control system. As you go back to these local  
19 flood protection projects, the primary document that  
20 controls the operation and maintenance of these projects  
21 is the Code of Federal Regulations 33 CFR Part 208-10.  
22 And that spells out what is allowed on the levee, what is  
23 allowed in the floodway, and how it is supposed to be  
24 operated and maintained.

25 That particular regulation is incorporated into

1 every O&M manual for the projects that the Central Valley  
2 Flood Protection Board is a sponsor for.

3           The two standard O&M manuals for the Sacramento  
4 River Flood Control Project and the San Joaquin River  
5 Flood Control Project were revised back in 1949 in  
6 recognition of some of the problems that we have in  
7 California growing sod on levees. And there was a  
8 specific revision that was approved at headquarters that  
9 allows small trees and brush on the waterside slope of a  
10 levee.

11           As I mentioned earlier, the Corps of Engineers  
12 has a number of engineering manuals that deal directly  
13 with the design and construction, operation and  
14 maintenance of levees. These engineering manuals were  
15 most recently updated in 2000. You have the design and  
16 construction of levees where all of the engineering  
17 standards associated with designing and constructing a  
18 levee are incorporated.

19           The EM for guidelines on landscape planning and  
20 vegetation was also updated in 2000. That particular  
21 document is currently being revised. And there is a draft  
22 engineering technical letter that is under peer review at  
23 the current time and should be adopted prior to the end of  
24 2008.

25           The Corps of Engineers also recently wrote a

1 levee owner's manual for non-federal flood control works  
2 in March of 2006 and published that.

3           The Corps is also in the process of -- yes, go  
4 ahead.

5           BOARD MEMBER BROWN: Excuse me. Go back on 49,  
6 your revision allows small trees and brush on waterside  
7 slope of levee.

8           MR. SANDNER: Yes.

9           BOARD MEMBER BROWN: What's the designation for  
10 small trees?

11           MR. SANDNER: There was no specific standard  
12 established for the size of trees. It basically  
13 specifically says small trees and brush are allowed on the  
14 waterside slope of the levee.

15           BOARD MEMBER BROWN: Do you have any idea what  
16 that means?

17           MR. SANDNER: The current standard that the Corps  
18 has published in the levee owners' manual is two inches in  
19 diameter for woody vegetation.

20           BOARD MEMBER BROWN: Okay.

21           BOARD MEMBER RIE: Excuse me. Could we go back  
22 to 208-10?

23           MR. SANDNER: Yes.

24           BOARD MEMBER RIE: Does it still say that you  
25 could plant willows in 208-10?

1           MR. SANDNER: In 208-10 it does talk about  
2   planting willows and shrubs on the waterside portion of  
3   the floodway. It does not specifically say the waterside  
4   slope of the levee.

5           BOARD MEMBER RIE: So is it okay to plant willows  
6   on the waterside slope?

7           MR. SANDNER: Yes, with respect to that  
8   particular revision that the Corps of Engineers authorized  
9   for the two projects in California, the Sacramento River  
10  Flood Control Project and the San Joaquin River Flood  
11  Control Project.

12          BOARD MEMBER RIE: Okay.

13          BOARD MEMBER BROWN: I heard you just a little  
14  bit different. I thought I heard you say not on the  
15  slopes and then you said on the slopes.

16          MR. SANDNER: The distinction I'm making is the  
17  question she asked about 208-10. 208-10 does not provide  
18  authorization for planting willows on the waterside slope  
19  of the levee. The revision to the O&M manuals that was  
20  approved in headquarters in 1949 specifically allows small  
21  trees and brush on the waterside slope of the levee. That  
22  is the exact language in the O&M manual.

23          BOARD MEMBER BROWN: So that could include  
24  willows?

25          MR. SANDNER: Yes.



1           PRESIDENT CARTER: And small trees have since  
2 been interpreted as two inches in diameter or less?

3           MR. SANDNER: Correct.

4           In addition to these documents and regulations,  
5 there are many others that deal with levee construction,  
6 levee operation and maintenance. And I did not choose to  
7 list all of those for you, because they're, you know, very  
8 numerous.

9           I did want to bring up the California Code of  
10 Regulations Title 23. That's what you folks utilize and  
11 require your local sponsors to follow in the operation and  
12 maintenance of the projects that you have responsibility  
13 for.

14           Title 23 very closely mirrors much of the  
15 language that's in 33 CFR 208-10. And in some instances  
16 it's even more specific about what the standard is.

17           At our last meeting I mentioned the roundtable --  
18 the California levee roundtable that came into being about  
19 a year ago. It was a joint venture between Central Valley  
20 Flood Protection Board, the Department of Water Resources,  
21 the Corps of Engineers, and a number of environmental  
22 agencies like U.S. Fish and Wildlife Service and National  
23 Marine Fisheries Service. And over the last year we have  
24 been working on what is called a framework document with  
25 respect to how vegetation on levees in California would be

1 handled.

2 And let's just look at some of the things that we  
3 have on levees in California.

4 --o0o--

5 MR. SANDNER: Large woody trees right on the  
6 crown of the levee.

7 --o0o--

8 MR. SANDNER: Again large woody trees on the  
9 waterside slope.

10 --o0o--

11 MR. SANDNER: Very extensive growth so that you  
12 cannot see the levee along portions of the Sacramento  
13 River.

14 --o0o--

15 BOARD MEMBER SUAREZ: Just for my clarification.  
16 All these pictures that we're looking at are waterways  
17 under our -- levees under our jurisdiction?

18 MR. SANDNER: That's correct, ma'am.

19 --o0o--

20 MR. SANDNER: So as some of the slides that we've  
21 looked at and some of the problems that we have, the  
22 roundtable framework has been put together to help the  
23 State of California resolve some of the vegetation  
24 encroachment issues that we have with the 1600, 1700 miles  
25 of levees here in California. What we have done is worked

1 out a plan with the state where over the next two years  
2 the Department of Water Resources and the Board will  
3 ensure that our local maintaining partners meet DWR  
4 standard for vegetation on levees. And that includes  
5 trimming up trees, removing certain shrubs and trees on  
6 locations on the levee.

7 After 2010 there's the expectation that our local  
8 maintaining agencies will come into compliance with the  
9 Corps's standards for vegetation on levees. And we are  
10 expecting to reach that milestone by 2012.

11 Let's look here at a cross-section of a levee and  
12 how vegetation can be incorporated into the system without  
13 jeopardizing any of the structural capability of the  
14 levee.

15 As we look here on the landside, we see that we  
16 have an oversized levee. On an oversized levee you can  
17 plant trees, large woody trees. You just need to ensure  
18 that there's a three-foot root-free zone between that  
19 overbuilt section and the actual levee prism right here.

20 On the waterside, we also can have vegetation,  
21 including large woody vegetation, on berms that are  
22 waterward of the levee prism.

23 The area that we are talking about where our  
24 plantings are taking place, that you have questions about,  
25 are happening right here in this area.

1           Any questions about this particular  
2 cross-section?

3           BOARD MEMBER BROWN: On the waterside you have  
4 five meters, 15 feet, from a soil protection. If the  
5 concern is impediment with the flow in the channel, how  
6 does this differ?

7           MR. SANDNER: What is your question?

8           BOARD MEMBER BROWN: If the concern is in keeping  
9 the channel open for maximum flood flow --

10          MR. SANDNER: Yes.

11          BOARD MEMBER BROWN: -- the question begs -- and  
12 even though it's on a berm and has more root stability,  
13 the flood flow impediment would obviously still be there  
14 because it's below the top of berm.

15          The question begs, how is this different than if  
16 it was just planted on the waterside, period?

17          MR. SANDNER: Again, the assumption when you are  
18 going to design vegetation into the system is that when  
19 you run your models, you will run the model with the  
20 expected roughage that you would have in the floodway.

21          BOARD MEMBER BROWN: Yes, I understand that. But  
22 my question is, is how does this differ even though it's  
23 on a berm? If the concern is the impediment that such a  
24 vegetation causes during high flood flows, how does it  
25 differ even though it's on a berm?

1           MR. SANDNER: How do you mean the impediment  
2 during high flood flows?

3           BOARD MEMBER BROWN: Well, if your ditch is full  
4 of brush or trees and it impedes the flows at higher flows  
5 within the ditch itself, I am asking the question how does  
6 it differ whether it's planted on a berm or on the side of  
7 the levee?

8           MR. SANDNER: Oh, okay. I understand what you're  
9 saying now.

10           The difference would be is that on the berm, if  
11 you had any kind of wind throe or erosion and you were to  
12 lose that tree, you would have no damage to the levee  
13 prism. If this particular tree right here were actually  
14 planted up here on the levee slope and it fell, had a root  
15 ball that pulled out of the levee prism, then you start to  
16 have direct erosion to a levee prism. And then that is  
17 what we do not want.

18           BOARD MEMBER BROWN: All you have is a big tree  
19 in your channel that's floating downstream towards a  
20 bridge or someplace and gets cross ways.

21           MR. SANDNER: And that could happen, yes.

22           PRESIDENT CARTER: I think what he's saying is  
23 that the primary concern is the structural integrity of  
24 the levee as opposed to the hydraulic effects of the  
25 vegetation in the channel.

1           BOARD MEMBER BROWN: That's why I qualified the  
2 question, was if your concern was with the flood flows  
3 within the channel. I understand the stability of the  
4 levee, and that's good. But if your concern was keeping  
5 the channel open for maximum flood flows so where they  
6 didn't overtop the bank, and you still stand the  
7 possibility of losing a big tree that could get cross ways  
8 on a culvert or a bridge or somewhere, then it begs the  
9 question how is it different?

10           MR. SANDNER: Again, my explanation was that when  
11 you design the system -- you have a particular channel  
12 there with a particular width and a particular capacity,  
13 and you develop and design that flood control system with  
14 levees, currently the Corps does not use the deterministic  
15 approach that we used to use in the past where you would  
16 have a design elevation for water flow and then an  
17 additional three foot of freeboard. What we use now is  
18 risk and uncertainty. And that would be very complicated  
19 for me to try to go into with you here.

20           But let's just say we took an example from the  
21 deterministic approach. If we design the system so that  
22 that vegetation that is there does not impact the level of  
23 that flow, in other words we take it into consideration as  
24 we're designing the system, we're not talking about adding  
25 in new vegetation over a period of, say, 20 or 25 years,

1 part of what you have to do with your maintenance program  
2 is ensure that you don't increase the amount of vegetation  
3 that is in the channel so that you have a reduction in  
4 flow as you are discussing.

5 BOARD MEMBER BROWN: I understand that. And  
6 that's a good answer. Thank you.

7 What about the problems that some of our crews  
8 have now? We just went up on Cache Creek yesterday, as a  
9 matter of fact, and inspected it. And it is really full  
10 of large trees and vegetation. And to get down in there  
11 to do some maintenance is pretty much impossible today,  
12 with trying to get permits from Fish and Game or whoever  
13 may be required to do maintenance within the channel. How  
14 do you -- how does the Corps address that, or do you?

15 MR. SANDNER: Again, you're asking me from the  
16 standpoint of a system that has been allowed to build up  
17 vegetation. And at that point -- you know, I don't want  
18 to say that it's not the Corps's responsibility, because  
19 our concern is public safety. What we have done is turn  
20 those projects over to the State of California to operate  
21 and maintain. And in turn they have turned them over to  
22 local levee districts or reclamation districts to operate  
23 and maintain. And from the day that they were turned  
24 over, they should have continued to provide the kind of  
25 maintenance that would have kept that channel clear so

1 that you didn't have the kind of situation that you have  
2 now.

3 BOARD MEMBER BROWN: Thank you for your diligence  
4 on that question.

5 SECRETARY DOHERTY: However, were you to plant  
6 more trees going down into the channel, that's not  
7 allowed, right? In other words you can build on that  
8 shoulder -- or plant on that shoulder but not below it?

9 MR. SANDNER: No, you could plant down below  
10 there as well, anywhere on the berm all the way down to  
11 where you see the water level.

12 SECRETARY DOHERTY: And that would be allowed?

13 MR. SANDNER: That would be allowed for the kind  
14 of small trees and brush that we're talking about on both  
15 the San Joaquin and the Sacramento River Flood Control  
16 System. I'm not talking about like full grown trees. You  
17 know, we wouldn't be looking to plant that kind of  
18 vegetation that would grow 20 or 30 feet high.

19 SECRETARY DOHERTY: Is this to be the definitive  
20 item that we will use as a guide from this time forward?

21 MR. SANDNER: The draft ETL that I mentioned that  
22 is currently under peer review has probably 20 or 24 pages  
23 of cross-sections showing various circumstances of a levee  
24 cross-section and how vegetation can be incorporated in  
25 those cross-sections. So I would say, no, you wouldn't



1 just utilize this one cross-section. Very shortly we will  
2 have a document that covers many different situations.

3 SECRETARY DOHERTY: So this is not the end  
4 article? There'll be an additional --

5 MR. SANDNER: That's correct.

6 BOARD MEMBER BROWN: As an example, is that tree  
7 you're showing on the waterside now, is that larger -- can  
8 that be larger than two inches in diameter?

9 MR. SANDNER: Yes, this tree can be, because it  
10 is on the berm and it is outside the three-foot zone.

11 BOARD MEMBER BROWN: Okay.

12 BOARD MEMBER RIE: Mr. Sandner, our regulations  
13 currently allow planting on the waterside slope up to five  
14 feet below the crown.

15 MR. SANDNER: Yes.

16 BOARD MEMBER RIE: Can we still do that after  
17 this policy comes out?

18 MR. SANDNER: Unless the decision is made to  
19 rescind the revision that is in the standard O&M manual,  
20 we would still be operating under those manuals.

21 BOARD MEMBER RIE: For the San Joaquin and the  
22 Sacramento systems?

23 MR. SANDNER: That's correct.

24 BOARD MEMBER RIE: Okay.

25 VICE-PRESIDENT HODGKINS: Jim, the tree on the

1 berm, you haven't extended the theoretical slope of the  
2 levee --

3 MR. SANDNER: -- all the way down here --

4 VICE-PRESIDENT HODGKINS: -- all the way down.

5 MR. SANDNER: That's correct.

6 VICE-PRESIDENT HODGKINS: And at the risk making  
7 it slightly more complicated than it is, if that tree were  
8 the kind of tree that put roots into the levee section, is  
9 it in or out of the maintenance policy?

10 MR. SANDNER: If this tree put down roots that  
11 would go through the theoretical cross-section of the  
12 levee --

13 VICE-PRESIDENT HODGKINS: Yeah.

14 MR. SANDNER: -- through this three foot zone?

15 Yes, it would be in violation of the policy.

16 VICE-PRESIDENT HODGKINS: It would be a  
17 violation.

18 So they can go on the berm providing the roots  
19 don't get into that theoretical levee section?

20 MR. SANDNER: That's correct. And it would be  
21 the same way over here on the landside.

22 VICE-PRESIDENT HODGKINS: Right, right.

23 MR. SANDNER: Yes.

24 VICE-PRESIDENT HODGKINS: And then I guess the  
25 other question I had -- you started out the presentation

1 with the vegetation risks. And I take it those are not up  
2 for discussion anymore?

3 MR. SANDNER: In --

4 VICE-PRESIDENT HODGKINS: And maybe they never  
5 were, but some of us thought they were.

6 MR. SANDNER: With respect to research -- ongoing  
7 research, is that your question?

8 VICE-PRESIDENT HODGKINS: Yeah.

9 MR. SANDNER: Again, I'll follow up a little bit  
10 more on the roundtable framework. And one of the tenets  
11 and goals within the roundtable framework is to conduct  
12 research into whether vegetation on levees can be  
13 incorporated to a greater or lesser degree than it is now.

14 And both the State of California and some of our  
15 local sponsors are moving forward with that research  
16 presently. And the Corps of Engineers Research Center is  
17 also conducting that research presently.

18 VICE-PRESIDENT HODGKINS: Okay.

19 --o0o--

20 MR. SANDNER: Now, let's talk about what raised  
21 the question. It was several projects were coming before  
22 you to be approved and they dealt with Sacramento River  
23 bank protection and PL 84-99 rehabilitation on the  
24 Sacramento and San Joaquin rivers.

25 I mentioned earlier that the Interagency Flood

1 Management Collaborative Group had been meeting over the  
2 last few years. And geotechnical engineers, planners,  
3 biologists, operations and maintenance engineers have been  
4 meeting to discuss designs that could incorporate  
5 vegetation into some of these repair sites. And the  
6 specifications that the Corps of Engineers is currently  
7 using for these projects was part of that collaboration  
8 between DWR, Corps of Engineers, and the environmental  
9 agencies.

10 --o0o--

11 MR. SANDNER: As I mentioned at our last meeting,  
12 these are the two species of willows that are in our  
13 specifications. Our botanists and biologists tell us that  
14 these particular species of willows generally do not grow  
15 larger than two inches in diameter.

16 PRESIDENT CARTER: Although we've got poll  
17 cuttings there that are two and a half?

18 MR. SANDNER: That's correct. And the poll  
19 cuttings again, as you'll see -- we'll move on to some  
20 slides here of the planting process -- they do get in some  
21 instances larger than two inches. And that goes to the  
22 question that you had at our last meeting with respect to  
23 maintenance. There is an expectation that when these  
24 plantings are done, that the local reclamation or levee  
25 districts will conduct maintenance to ensure that the

1 stand of willows does not develop into any trunks that are  
2 greater than two inches in diameter.

3           The difference between poll cuttings and live  
4 cuttings: Poll cuttings are cut ahead of time and then  
5 stored. And live cuttings are cut the day they're  
6 planted.

7           BOARD MEMBER BROWN: Jim, does this mean that if  
8 we have willows planted and they do grow to beyond two and  
9 a half inches, then we have an obligation or a  
10 requirement, let's say, to cut them out?

11           MR. SANDNER: Again, the poll cutting when  
12 it's -- we'll see some slides here of those cuttings.

13           The poll cutting itself is not going to continue  
14 to grow. What you have is a terminal bud where you will  
15 have new shoots come off of that poll cutting that  
16 actually start going up.

17           PRESIDENT CARTER: But I think the question was,  
18 if those buds then grow and grow to beyond two inches,  
19 there's an obligation of the local maintaining agency or  
20 the state to cut those out?

21           MR. SANDNER: Oh, I'm sorry. I misunderstood the  
22 question. Yes.

23           My point earlier was that if we incorporate these  
24 plantings into the flood control system, that they will be  
25 maintained by the local maintaining agency and that they

1 will ensure that you have no trunks that get larger than  
2 two inches in diameter. So, yes, they will need to  
3 maintain them.

4 --o0o--

5 MR. SANDNER: These slides are showing the  
6 planting process, the kind of poll cuttings and live  
7 cuttings that are being used.

8 --o0o--

9 MR. SANDNER: In our close-up here you can see  
10 they're about a foot long once they are placed into either  
11 the stone or the soil and down along the bank of the  
12 river.

13 --o0o--

14 MR. SANDNER: Again, you can see right down here,  
15 right along the shoreline where the plantings -- where the  
16 poll cuttings and live cuttings have been placed, as well  
17 as along the waterside slope of the levee.

18 BOARD MEMBER BROWN: Jim, in discussing the  
19 capacity of the channels, if we have a channel that's on  
20 the edge or maybe doesn't quite meet the 100-year storm  
21 requirement, would we still be allowed then to go in and  
22 plant something on the waterside that could impede that  
23 even a little bit more?

24 MR. SANDNER: As we do any work within the  
25 system, there are always models that are run to determine,

1 you know, what the flow is going to do with respect to the  
2 channel capacity. For example, you have many projects  
3 that have fairly extensive changes to them. And when you  
4 run the model, there is almost no change or only very  
5 imperceptible change in the model. The kind of plantings  
6 that we would be doing in these instances in most cases  
7 are in areas where there was already vegetation that was  
8 destroyed in the case of PL 84-99 and even Sacramento bank  
9 protection, that we're replacing a lot of vegetation that  
10 was washed out in a flood event.

11 PRESIDENT CARTER: Jim, when -- if and when these  
12 willow plantings that we are putting in in general for  
13 mitigation for environmental damage that's occurred as a  
14 result of bank protection projects or other projects in  
15 the system, when they -- when the local maintaining  
16 agencies have to go in and cut out the plants that are  
17 larger than two inches in diameter, do we have any feeling  
18 for whether or not there's going to be additional  
19 mitigation for that required and what that might be?

20 MR. SANDNER: Our agreements with the  
21 environmental agencies as we have collaborated with them  
22 on these particular designs, we are not being required in  
23 our coordination that we're doing with, say, Fish and  
24 Wildlife Service or National Marine Fisheries Service to  
25 do replacements. In fact, if we plant these and there's a

1 certain number of them that do not survive, we're not  
2 being required to go out and continue to replant them.

3 PRESIDENT CARTER: But does that mean that the  
4 local maintaining agencies that are then going to take  
5 care of them 15 years from now and have to go in and, in  
6 order to be compliant with the standard, cut the branches  
7 or the stems that are larger than two inches in diameter,  
8 are they going to have to mitigate for that maintenance?

9 MR. SANDNER: They should not be mitigating for  
10 maintenance. Maintenance is something that you do on an  
11 ongoing basis. What's happened to us in our system, both  
12 the San Joaquin system and the Sacramento system, is we  
13 have had a lapse in our maintenance practices that have  
14 allowed extensive vegetation to grow and provide habitat.  
15 And that is now what we are being asked to mitigate for,  
16 is things where we didn't go in and do our continuous  
17 maintenance. If you do continuous maintenance, then you  
18 don't get into the kind of a system that we currently have  
19 in many locations on both of these river systems.

20 PRESIDENT CARTER: I probably am going to agree  
21 with you in general. Although, like, for example, when we  
22 saw at Cache Creek yesterday, it is, it's overgrown.  
23 There's lots of trees and large woody vegetation inside  
24 the channel that's well over two inches in diameter. But  
25 there's a lot in there that is not. And those -- and that



1 particular section of Cache Creek is maintained by the  
2 state, and the state -- those folks have been told not to  
3 go in and cut that for environmental reasons.

4 Even the things where they -- you know, that  
5 are -- that they could theoretically be maintaining,  
6 mowing, things like that, they have been told to not touch  
7 it, for fear of enforcement action on the part of the  
8 resource agencies.

9 MR. SANDNER: And that's correct. That is  
10 happening on both the San Joaquin and the Sacramento River  
11 systems.

12 What we have done is we have created a situation  
13 where we have allowed vegetation to encroach into the  
14 channel and to grow for decades without the proper kind of  
15 maintenance. And now we have a whole list of threatened  
16 and endangered species that depend upon this vegetation.  
17 And so we are having to work through these issues with the  
18 environmental agencies in trying to restore some of these  
19 floodways to their original capacity. It's not an easy  
20 issue to deal with.

21 PRESIDENT CARTER: Okay. I guess I'm wondering  
22 how -- I mean once this becomes mature, are we shooting  
23 ourselves in the foot here? Because obviously we're  
24 putting that in for environmental benefit.

25 MR. SANDNER: Again, as I talked about, you know,

1 what are some of the benefits of vegetation. The kind of  
2 vegetation that we have selected for these plantings is  
3 particularly to inhibit erosion on that waterside toe of  
4 the levee.

5           The biologists have told us that these do not  
6 grow into large tall trees. They're basically very thin  
7 kind of wispy-type willows, that when you have high flows,  
8 they lay down; when the flows come back up, they will  
9 stand up and provide some of that shaded riverine habitat  
10 that the environmental agencies want.

11           So with these kind of plantings we're trying to  
12 incorporate some of those values that we see for  
13 vegetation in the flood control system. Again, there's a  
14 requirement to maintain it so that you keep it in a  
15 certain way and not let all of this other wild growth  
16 encroach into the floodway or on to the waterside slope or  
17 landside slopes of the levees.

18           PRESIDENT CARTER: But I find it hard to believe  
19 that when one of these willows, which is going to become  
20 critical habitat for an aquatic species because it's going  
21 to be shaded riverine habitat, when it comes time to cut  
22 it down, when it's two and half inches in diameter, it  
23 will be critical habitat and we'll not be able to -- we'll  
24 not be allowed to cut it down because it is critical  
25 habitat, even though it's a maintenance activity. I

1 just -- I feel like that's what's coming down the pike.

2 MR. SANDNER: And I don't want to try to give you  
3 any assurances that that would never happen. I don't  
4 think anyone could do that. You know, I think we've seen  
5 in many instances where certain species have been listed  
6 and there have been significant impacts to not just flood  
7 control systems, but many other natural systems where  
8 there have been direct impacts to any kind of development.

9 So, yes, you could have an endangered species  
10 listed tomorrow or 5 years in the future or 20 years in  
11 the future where we may have to address that.

12 BOARD MEMBER BROWN: Jim, it seems like since the  
13 Endangered Species Act is federal and the Corps is federal  
14 and we're looking to the Corps for guidance on how to  
15 handle this, it would be helpful if we could get some  
16 guidance from the federal agencies of how to address this  
17 critical issue, our primary concern being one of  
18 protecting public health here on one hand, and then  
19 finding it very difficult to do the maintenance that's  
20 required on the other hand. And I think the feds need to  
21 be involved in this in some manner to try to help at least  
22 provide guidance of how to address that issue also.

23 MR. SANDNER: Well, again, I think on the one  
24 hand, there's a concern that Ben talks about with respect  
25 to threatened endangered species being listed. Well, one

1 of the reasons they become listed is because there's a  
2 loss of habitat. And what we are trying to do, not just  
3 here in the California region but across the country, is  
4 to incorporate values into our developments that allow  
5 species to kind of coexist with us so they don't become  
6 threatened and endangered and they don't become listed.

7           So, for example, if we just have scorcherous  
8 policy of absolutely no vegetation within the floodway or  
9 incorporated in with these levees, you may be ensuring  
10 that you're going to have species that become listed as  
11 threatened and endangered. Whereas if you can incorporate  
12 some of these values into the system, you can have  
13 coexistence between those living organisms and human  
14 development.

15           BOARD MEMBER BROWN: Well, we agree with you on  
16 that, and that's what we want to do. But the concern  
17 that -- the question that's being asked though is how do  
18 we protect the drainage facilities that we're responsible  
19 for from going beyond that? And I think that's the issue  
20 that we're struggling with right now. Certainly we want  
21 to provide the habitat to the best we can. And I think  
22 you give good guidance for us to do that. But now the  
23 issue is -- and if I heard Mr. Chairman correctly here  
24 is -- what do we do when we find ourselves in a position  
25 of the growth growing beyond what is prescribed? How do

1 we handle that when we come up against the question of  
2 removing habitat for endangered or listed species? How do  
3 we go ahead and satisfy your requirements of keeping  
4 things under two inches, for instance, if we find  
5 ourselves caught between protecting the endangered or  
6 listed species and also providing proper flood control  
7 protection for the people?

8           PRESIDENT CARTER: It comes down to a choice for  
9 us of whether or not we maintain PL 84-99 assistance and  
10 accredited levees or being consistent with the state and  
11 federal species laws -- endangered species laws. Because  
12 on the one hand if we don't cut that two and half inch  
13 willow, we're not in compliance with your standards. If  
14 we do, we may get our hands slapped from a species.

15           So I think as the Corps is considering their  
16 standard, we need to look at the Catch 22 that the local  
17 maintaining agencies are in once that -- once those  
18 projects are completed in terms of revegetating or  
19 mitigating for environmental damage. And I don't know  
20 that we're really fully considering that.

21           I think we need to. And I think -- you know, the  
22 Corps turns the project over to us after they have  
23 completed it. We're responsible for maintaining it. And  
24 yet, you know, we do inevitably get in that -- get hit  
25 with that Catch 22. It always happens. And that's one of

1 the reasons why we're where we are.

2 MR. SANDNER: No, I --

3 PRESIDENT CARTER: We need to think about the end  
4 game.

5 MR. SANDNER: No, I understand that. And, again,  
6 if -- what has happened to us in California is we had a  
7 system of levees that were built without -- I don't want  
8 to say without a lot of thought. But originally they were  
9 put together to actually kind of channel the rivers in its  
10 low flow configuration instead of taking into account a  
11 much broader floodway. And over the years, those were  
12 utilized mostly for protection of agricultural lands. And  
13 today we find that many of those lands that were being  
14 used for agriculture are being urbanized. And our levees  
15 are right up next to the river.

16 So we don't have this opportunity, as I pointed  
17 out in one of our slides, where we have this broad  
18 floodway where you would still have a nice riparian  
19 corridor and you would have the levee setback, you know, a  
20 quarter of a mile or even a half a mile from where the low  
21 flow channel of the river is located.

22 So you are correct in that we have a complex  
23 problem on our hands in California. And we are I think  
24 trying to do our best to satisfy both that requirement for  
25 public safety with respect to our urban areas and also to

1 meet those laws and regulations that all of us have asked  
2 our representatives to pass to provide environmental  
3 values.

4           So I don't want to say that the Corps of  
5 Engineers is ignoring either one of those situations. I  
6 think what we are trying to do is to work with the State  
7 of California and all of our sponsors to do the best that  
8 we can to address both of those issues and try to make  
9 them work without kind of an adverse impact to either one.

10           PRESIDENT CARTER: Mr. Hodgkins.

11           VICE-PRESIDENT HODGKINS: Jim, I want to see if I  
12 understand what you're saying.

13           In effect, when we do willow plantings in a Corps  
14 project where the commitment is to meet the Corps  
15 maintenance standard, the expectation is that annually, or  
16 every other year at the most, the maintaining agency is  
17 going to go through the willows and thin them by removing  
18 those that are greater than two inches in diameter. And I  
19 think you're telling us that the Corps in its  
20 communication with the resource agencies has the resource  
21 agencies' agreement that if that's done, that's not  
22 considered to be -- it's not considered to be enough of an  
23 impact to require any sort of mitigation.

24           MR. SANDNER: That's correct with these kind of  
25 plantings.

1 VICE-PRESIDENT HODGKINS: Okay.

2 PRESIDENT CARTER: I think maybe I'd like to see  
3 that in writing and a commitment from the resource  
4 agencies in the permits that we're doing and issuing for  
5 these.

6 VICE-PRESIDENT HODGKINS: I think that's a great  
7 idea.

8 PRESIDENT CARTER: Because on the ground you  
9 don't see that happening.

10 MR. SANDNER: Well, it may be one of the issues  
11 that we need to bring up to the Interagency Flood  
12 Management Committee and specific ask those questions of  
13 the environmental agencies and find out if there's some  
14 way we can incorporate a provision within these agreements  
15 that we have that states that.

16 PRESIDENT CARTER: Would you be willing to bring  
17 these same photos to the roundtable meeting next week?

18 MR. SANDNER: Certainly.

19 PRESIDENT CARTER: Okay.

20 MR. SANDNER: I can bring the same presentation.

21 PRESIDENT CARTER: Okay, great. Because I'd like  
22 to ask the question.

23 MR. SANDNER: Okay. Good.

24 PRESIDENT CARTER: Any more questions for Mr.  
25 Sandner?



1 Do you have anything else, Mr. Sandner?

2 MR. SANDNER: No. I understand your concern. I  
3 think the Corps of Engineers has very similar concerns  
4 that the Board has. But I hope our discussion today has  
5 provided you with enough information to continue to make  
6 good decisions as a board with respect to the projects  
7 that the Corps of Engineers and our partners are bringing  
8 before you.

9 PRESIDENT CARTER: Okay. We actually tabled a  
10 few items -- a couple items relating to this particular  
11 issue from our consent calendar for consideration this  
12 afternoon. If you have time, we'd welcome your perhaps  
13 listening to that conversation and maybe participating.

14 MR. SANDNER: I'll be happy to stay.

15 PRESIDENT CARTER: Okay. And we really do  
16 appreciate your coming and sharing this information. It  
17 helps -- we're probably not where we want to be yet in  
18 terms of understanding the issue. But every little bit  
19 helps. Thank you.

20 MR. SANDNER: Okay. Very good.

21 BOARD MEMBER RIE: One question before you leave.

22 MR. SANDNER: Yes.

23 BOARD MEMBER RIE: Will the Board have an  
24 opportunity to comment on the white paper?

25 MR. SANDNER: On the white paper or the

1 roundtable framework?

2 BOARD MEMBER RIE: The white paper for the  
3 vegetation.

4 MR. SANDNER: I think the white paper for  
5 vegetation -- I mean that's been overcome by events. I  
6 think that already has been completed.

7 BOARD MEMBER RIE: Okay. So is there going to be  
8 another policy document coming out soon?

9 MR. SANDNER: The policy document that's going to  
10 be coming out is the engineering technical letter on  
11 landscape plantings on levees and floodways and flood  
12 control structures. And that is currently in the process  
13 of being peer reviewed.

14 BOARD MEMBER RIE: Will that supersede our O&M  
15 manuals for the Sacramento or the San Joaquin?

16 MR. SANDNER: It does not supersede the O&M  
17 manual.

18 BOARD MEMBER RIE: Okay. So it won't apply to  
19 us?

20 MR. SANDNER: Excuse me?

21 BOARD MEMBER RIE: It won't apply to us?

22 MR. SANDNER: It applies to us in the sense that  
23 we are required to incorporate that guidance. And it is  
24 guidance. It's not even a regulation.

25 BOARD MEMBER RIE: Will we have an opportunity to

1 comment on that?

2 MR. SANDNER: I believe that you will have an  
3 opportunity to comment on that.

4 BOARD MEMBER RIE: Okay, great. Thanks.

5 MR. SANDNER: Okay. Anything else?

6 BOARD MEMBER BROWN: Thank you.

7 PRESIDENT CARTER: Gary, did you want to make a  
8 comment?

9 CHIEF ENGINEER HESTER: I would like to request  
10 that John Yago have an opportunity to express a comment.

11 PRESIDENT CARTER: Okay. Yes.

12 Thank you very much, Mr. Sandner.

13 MR. SANDNER: Thank you.

14 FLOODWAY PROTECTION SECTION CHIEF YAGO: John  
15 Yago for the record, Chief of the Floodway Protection  
16 Section.

17 From my previous experience with inspection, I  
18 could add a note on the two-inch diameter about the trees.  
19 Anything less than two inches is not considered  
20 established habitat. And so if we remove the trees prior  
21 to being two inches, there is no mitigation requirement  
22 for that.

23 And then on the other case of taking care of  
24 basically when the term needs to be, that is dictated by  
25 an agreement between U.S. Fish and Wildlife and Department

1 of Fish and Game of when maintenance is allowed within a  
2 certain waterway. So within the San Joaquin County or  
3 within Sacramento County.

4 PRESIDENT CARTER: You're talking about timing?

5 FLOODWAY PROTECTION SECTION CHIEF YAGO: Timing,  
6 that's correct. So when we were out there with the tour,  
7 it was not within the time frame for maintenance to be  
8 occurring.

9 PRESIDENT CARTER: Okay. Thank you.

10 BOARD MEMBER SUAREZ: Mr. Yago?

11 FLOODWAY PROTECTION SECTION CHIEF YAGO: Yes.

12 BOARD MEMBER SUAREZ: Could you repeat the first  
13 thing you said. I just want to make sure I heard that  
14 right.

15 FLOODWAY PROTECTION SECTION CHIEF YAGO: Okay.  
16 It's based upon the size or the diameter of the tree. Or  
17 actually it's not considered an established tree at that  
18 time, so it's not considered to be habitat.

19 BOARD MEMBER SUAREZ: So it can be removed with  
20 no environmental mitigation consequences?

21 FLOODWAY PROTECTION SECTION CHIEF YAGO: That's  
22 correct, because it's not established yet.

23 BOARD MEMBER SUAREZ: I notice here the insanity  
24 of some of our environmental laws, which are supposed to  
25 in theory encourage to develop that habitat. But in this

1 particular case it seems to me it's doing precisely the  
2 opposite. It's discouraging the people that have the  
3 potential habitat from participating in helping these  
4 species. And it's insane.

5 PRESIDENT CARTER: Anything else, Mr. Yago?

6 FLOODWAY PROTECTION SECTION CHIEF YAGO: No, that  
7 is it.

8 PRESIDENT CARTER: Thank you. Thank you for  
9 those comments.

10 Okay. Ladies and gentlemen let's take a  
11 ten-minute recess, if you will. And we will reconvene.  
12 And when we do come back, we will be considering the three  
13 items tabled from the consent calendar.

14 Thank you.

15 (Thereupon a recess was taken.)

16 PRESIDENT CARTER: Ladies and gentlemen, if I  
17 could ask you to please take your seats. We'll go ahead  
18 and continue with the meeting.

19 We will now consider Item 8C. As you recall,  
20 this was pulled from the consent calendar. And I will  
21 call to order the hearing for Permit No. 18233. It's to  
22 consider approval of said permit to construct a residence  
23 and an elevated concrete driveway supported by four  
24 concrete piers; plant three Crape Myrtle trees, one  
25 Eastern Redbud tree, some Blue Eyed Grass, Golden

1 Variegated Sweet Flag, and Cape Rush on the left, or east,  
2 bank overflow area of the Sacramento River in Sacramento  
3 County.

4           We will follow our normal hearing process where  
5 we will have staff will make their presentation. We will  
6 then entertain public testimony, hearing from the  
7 applicant, persons supporting the applications, persons  
8 opposing the application, and then any others that neither  
9 support or oppose, hear some rebuttal from the applicant  
10 if they choose, any further Board staff testimony. And  
11 then we'll close that and the Board will deliberate where  
12 it will be able to ask questions and consider the  
13 recommendation from the staff, make changes and so forth.

14           So that's the process.

15           Mr. Butler, good afternoon.

16           (Thereupon an overhead presentation was  
17 Presented as follows.)

18           SENIOR ENGINEER BUTLER: Good afternoon,  
19 President Carter, members of the Board.

20           What we've decided to do on these items that  
21 we're going to hear this afternoon is I'll provide just a  
22 brief introduction for the record as to the nature of the  
23 project. I'll review the CEQA findings. And then Steve  
24 Dawson will provide any additional technical assessment  
25 that may be necessary. And then I guess we'll kind of tag

1 team the question and answers that you may have with us.

2           It's my understanding that there is a  
3 representative -- there's no representative of the  
4 applicant for this project currently in the audience. So  
5 we'll just begin with that.

6           Again, this is Permit No. 18233. The applicant  
7 is Allan Galbreath. The proposal essentially is to  
8 construct a residence along the Garden Highway in  
9 Sacramento County. And the parts of the residence that  
10 are included in the permit description, it's a 33-foot  
11 wide elevated concrete driveway, four concrete piers, and  
12 then there are specific trees and other plants called out.

13           In the process of reviewing the plants that were  
14 called out, we consulted Title 23 of our regulations. The  
15 Crape Myrtle, the Eastern Redbud were both listed as trees  
16 that are permitted. The Golden Variegated Sweet Flag, we  
17 deem that to be acceptable based on where it was planted  
18 on the property. The Cape Rush is normally something that  
19 we would not allow down at the water's edge. But because  
20 it was specified as being contained only within planter  
21 boxes along the driveway on the street side of the home,  
22 we didn't have any problem with that.

23           So we really didn't see any initial issues with  
24 any of the plantings.

25           I'll let Steve discuss the residence. This is in

1 RD 1000. We'd received an endorsement from the district.

2 And we've also received the standard Corps 208-10 letter.

3 With respect to CEQA, there was no lead agency  
4 designated in the application so the Board chose -- we  
5 chose to act as the lead agency. And I determined that  
6 this project would be exempt from CEQA under Class 3 and 4  
7 categorical exemptions. The Class 3 covers the  
8 construction of a single-family residence and the Class 4  
9 covers essentially the landscaping.

10 We addressed the Water Code Section 8610.5  
11 compliance, as we do in our standard staff reports for our  
12 consent items. And it was a pretty straightforward  
13 recommendation for you to adopt the findings, approve the  
14 permit, and then we would file the Notice of Exemption  
15 with the clearinghouse.

16 So with that I'd like Steve to discuss any  
17 technical issues specific to the location of the residence  
18 along the Garden Highway and anything else. And then  
19 we'll be happy to answer any questions.

20 MR. DAWSON: For the record, Steve Dawson,  
21 Floodway Protection Section.

22 Eric has given a good overview of this proposed  
23 project. The house as has been submitted is in -- will be  
24 in compliance with Title 23 under the appropriate Section  
25 133 for development along the Garden Highway.



1           I really have no other technical issues to  
2 discuss at this time, because the submitted plans will be  
3 in compliance, the vegetation will be in compliance. As  
4 we generally review this, nothing was there that would  
5 cause us any concern. This is a normal permit for along  
6 the Garden Highway. We do probably five or six of these a  
7 year.

8           PRESIDENT CARTER: Okay. Mr. Punia.

9           EXECUTIVE OFFICER PUNIA: I want to let the Board  
10 know that in the audience we have the general manager for  
11 RD 1000, Paul Devereaux. If the Board has any questions,  
12 he may be able to answer too.

13          PRESIDENT CARTER: Okay. Anything else from the  
14 staff?

15          SENIOR ENGINEER BUTLER: Like we said, This is a  
16 pretty straightforward application from our perspective.

17          MR. DAWSON: That's correct.

18          PRESIDENT CARTER: Okay. Is there anybody that  
19 would like to offer public testimony in support of the  
20 application?

21          Any in opposition of the application?

22          Any general comments?

23          Okay. Are there questions for the staff?

24          BOARD MEMBER RIE: Yes.

25          PRESIDENT CARTER: Okay.

1           BOARD MEMBER RIE: Are they proposing any fences  
2 on the River side of the levee?

3           MR. DAWSON: No.

4           BOARD MEMBER RIE: Okay. And where is the  
5 finished floor of the house in relation to the 200-year  
6 floodplain?

7           MR. DAWSON: We did not consider this for the  
8 200-year floodplain because I do not have that numerical  
9 data available. I used 100-year as adopted under Section  
10 133. And that shall be two feet above that or more. In  
11 this case it's just above two feet above the 100 -- or the  
12 design.

13          BOARD MEMBER RIE: Okay. Is this house  
14 construction going to have any issues with SAFCA's  
15 proposed project?

16          MR. DAWSON: None that I see.

17          BOARD MEMBER RIE: Okay. And I'm just wondering  
18 if we're requiring any sort of deed notification to be  
19 recorded on the property that there may be some future  
20 flood risk.

21          MR. DAWSON: That condition will be in the  
22 permit. And we're having them establish a covenant  
23 running with the land.

24          BOARD MEMBER RIE: Okay. So there shouldn't be  
25 any questions from future owners of this property that the

1 100-year floodplain is here and they built the house there  
2 and we didn't tell them?

3 MR. DAWSON: They will be notified of any future  
4 development in a change in the plan of -- adopted plan of  
5 flood control that they are liable for any changes  
6 necessary for that property.

7 BOARD MEMBER RIE: Okay. So they're going to  
8 have to record something against their --

9 MR. DAWSON: That will be the covenant running  
10 with the land.

11 BOARD MEMBER RIE: All right. Thanks.

12 SECRETARY DOHERTY: That already runs with the  
13 land. Like when they went to get their title insurance,  
14 it stipulates in there that it's in a flood area, right?

15 MR. DAWSON: It will be once it's recorded. It  
16 is not recorded at this time.

17 SECRETARY DOHERTY: Okay.

18 MR. DAWSON: It is part of our submittal  
19 package -- I mean our application package is received.  
20 When we issue the permit, we issue a draft covenant which  
21 they have to complete. And when it's finished and  
22 completed and accepted by us, it's recorded and it's -- a  
23 copy is given to the landowner and to the Board.

24 SECRETARY DOHERTY: Mr. Devereaux, why -- I had a  
25 question for you.

1           Why does District 1000 weigh in on this  
2 application?

3           MR. DEVEREAUX: For the record, Paul Devereaux,  
4 Reclamation District 1000 General Manager.

5           Your requirements -- or your Title 23 requires an  
6 endorsement from the local maintaining agency. And that's  
7 what we are, the local maintaining agency --

8           SECRETARY DOHERTY: But they're on the inside of  
9 the levee.

10          MR. DEVEREAUX: But it is in the floodway. And  
11 as alluded to, some of this, you know, landscaping is on  
12 the levee and within the easement that the district has.

13          SECRETARY DOHERTY: All right. Thank you.

14          PRESIDENT CARTER: Any other questions of staff  
15 or Mr. Devereaux?

16          BOARD MEMBER SUAREZ: I have one, Mr. President.

17          PRESIDENT CARTER: Please.

18          BOARD MEMBER SUAREZ: I just want to make sure I  
19 understand. You're saying that you are supportive of the  
20 application because it meets our current regulations?

21          MR. DEVEREAUX: Are you asking the staff?

22          BOARD MEMBER SUAREZ: Yes.

23          SENIOR ENGINEER BUTLER: Yes, that would be  
24 correct.

25          BOARD MEMBER SUAREZ: And when was the last time

1 our regulations were revised?

2 SENIOR ENGINEER BUTLER: I do not know. I  
3 know --

4 MR. DAWSON: That would be about October of 1996.

5 BOARD MEMBER SUAREZ: So it's been ten years  
6 since?

7 MR. DAWSON: Correct.

8 BOARD MEMBER SUAREZ: So knowing what we know --  
9 well, I guess I'm not here to speculate at this point.

10 SENIOR ENGINEER BUTLER: I would like to enter  
11 some more facts into the record, if I may.

12 There was a question regarding the elevations.  
13 And I'm looking at a -- I guess we could put it up on the  
14 screen. If you could help me remember how to transform  
15 it.

16 Somebody asked a question about the elevations.  
17 And I'd like to clarify what they are shown in the  
18 drawings that we received.

19 Okay. We're looking at the waterside of the  
20 house. I'm just going to have to talk loudly.

21 The Sacramento River would be to the right -- or  
22 to the left of the screen. And right here it states  
23 100-year flood elevation equals 36.4 feet. The finish  
24 first floor elevation is 42.4 feet or a 6-foot  
25 differential.

1           And on the extreme right of this drawing, the  
2 road crown of the Garden Highway at its current height is  
3 40.4 feet. So they're two feet above the road crown and 6  
4 feet above the current 100-year flood elevation.

5           And as Steve mentioned, although we've heard a  
6 lot of information from SAFCA on calculated water surface  
7 profiles in the Natomas area, we don't have the specific  
8 calculated number for this location to tell you where that  
9 200 would fall.

10           BOARD MEMBER SUAREZ: Can you give an educated  
11 guess for where that number would fall?

12           SENIOR ENGINEER BUTLER: I don't recall what  
13 those numbers were back from the earlier meetings this  
14 year. It was on the order of a few feet of difference,  
15 but I can't recall.

16           PRESIDENT CARTER: Any other questions of staff?

17           BOARD MEMBER RIE: One more question.

18           PRESIDENT CARTER: Please.

19           BOARD MEMBER RIE: Title 23 allows houses and  
20 Reclamation District 1000 on the water side of the levee.  
21 I'm just wondering if that meets current Corps policies  
22 and guidelines since the Corps has made numerous changes  
23 to their policies and guidance in the last couple of years  
24 post-Katrina. So I'm just wondering if that still meets  
25 Corps guidance.

1           MR. DAWSON: I believe that the Corps would  
2 accept our opinion as to the application of Title 23. We  
3 have received no documentation showing that we should  
4 change any of Section 133 at this time.

5           BOARD MEMBER RIE: Mr. Sandner, do you want to  
6 comment?

7           MR. SANDNER: Jim Sandner, Sacramento District.  
8 Give me a second to review our letter to the  
9 Board.

10           In I think about the last couple of years in the  
11 letters that we are submitting for a request for new  
12 structures in RD 1000, we are making reference to the  
13 Executive Order 11988 to discourage development within a  
14 floodway. And we have pointed that out to the Board and  
15 indicated that the Corps of Engineers would be willing to  
16 sit down with the Board and enter into discussions about  
17 the policies that have been in place for a number of years  
18 in RD 1000. So we have made a recommendation, but we have  
19 not made a specific change in our, you know, recommending  
20 denial of the permit.

21           BOARD MEMBER RIE: Do these structures on the  
22 waterside of the levee have any impact on the levee to  
23 flood fight?

24           MR. SANDNER: I'm not sure the last time that you  
25 visited RD 1000. But there are many, many structures out

1 there that definitely impact whether you could flood fight  
2 the levee.

3 BOARD MEMBER RIE: Thank you very much.

4 MR. SANDNER: Thank you.

5 PRESIDENT CARTER: One of the requirements of  
6 the -- or one of the conditions mentioned in the Corps's  
7 letter is that the structure shall be at least two feet  
8 above the future crown elevation determined by SAFCA's  
9 Natomas Levee Improvement Program. We verified that in  
10 fact that is the case because I guess it -- Eric said the  
11 finished floor was going to be two feet above the existing  
12 crown. So that -- I'm assuming then that the existing  
13 crown elevation is not going to be changed as part of the  
14 Natomas Flood Improvement Program -- or Levee Improvement  
15 Program.

16 SENIOR ENGINEER BUTLER: The existing -- yeah,  
17 that's correct, because they're showing it two feet above  
18 the existing crown.

19 PRESIDENT CARTER: So and we verified that  
20 Natomas doesn't have plans to raise the crown elevation at  
21 this location?

22 SENIOR ENGINEER BUTLER: No, I have not verified  
23 that.

24 PRESIDENT CARTER: Okay. Any other questions of  
25 staff?



1           Okay. At this point we will close the public  
2 testimony portion of the hearing.

3           Any further deliberations by the Board? Any  
4 questions? Any proposed changes to staff's  
5 recommendation? Which, by the way, is to approve the  
6 permits, adopt the CEQA findings, and direct staff to file  
7 a notice of exemptions.

8           BOARD MEMBER RIE: I move to approve the staff's  
9 recommendation.

10          PRESIDENT CARTER: Okay.

11          SECRETARY DOHERTY: I'll second.

12          PRESIDENT CARTER: And there's a second -- motion  
13 and a second.

14          Any further discussion?

15          Mr. Punia, would you call the roll, please.

16          EXECUTIVE OFFICER PUNIA: Board Member John  
17 Brown?

18          BOARD MEMBER BROWN: Aye.

19          EXECUTIVE OFFICER PUNIA: Board Member Emma  
20 Suarez?

21          BOARD MEMBER SUAREZ: No.

22          EXECUTIVE OFFICER PUNIA: Board Vice-President  
23 Butch Hodgkins?

24          VICE-PRESIDENT HODGKINS: Aye.

25          EXECUTIVE OFFICER PUNIA: Board Member Teri Rie?

1 BOARD MEMBER RIE: Aye.

2 EXECUTIVE OFFICER PUNIA: Board Member Lady Bug?

3 SECRETARY DOHERTY: Aye.

4 EXECUTIVE OFFICER PUNIA: Board President Ben  
5 Carter?

6 PRESIDENT CARTER: Aye.

7 The motion carries 5 to 1.

8 Thank you very much, gentlemen.

9 We'll move on to Item No. 8 O, which I  
10 will -- well, actually I'll adjourn the -- or close the  
11 hearing first on Permit No. 18233.

12 And I will open the hearing on Permit No. 18374,  
13 which is to consider approval of Permit No. 18374 to plant  
14 native trees, shrubs and grasses within the designated  
15 floodway on the right, or west, bank of the Sacramento  
16 River in Tehama County.

17 Mr. Butler.

18 We'll follow, by the way, the same process we  
19 just followed in the prior application.

20 (Thereupon an overhead presentation was  
21 Presented as follows.)

22 SENIOR ENGINEER BUTLER: Okay. Two of three.

23 This is Permit No. 18374. The applicant is  
24 Robert Ginno G-i-n-n-o, who is the landowner and eventual  
25 maintainer of the proposed project. It's located east of

1 Corning and approximately three miles downstream of the  
2 Woodson Bridge on the Sacramento River in Tehama County.  
3 It's near the confluence of Jewett Creek.

4 Let me see if I have a map in this PowerPoint --  
5 or in this package here.

6 Okay. This is also in your package.

7 Well, we don't have a really good one here with  
8 us today.

9 The description of the proposed project was to  
10 plant approximately 87 acres with native trees, shrubs and  
11 grasses within the designated floodway on the right, or  
12 west, bank of the Sacramento River.

13 The project is funded by a grant from the  
14 Wildlife Conservation Board, which is -- their  
15 relationship with the Department of Fish and Game is  
16 similar to our organizational relationship with DWR.

17 We have not received Corps of engineers 208-10  
18 endorsement at this time. We were anticipating possibly  
19 getting it by today. But I don't believe we have it yet.

20 And there's no non-federal endorsing agency for  
21 this project. This is above the levee'd section of the  
22 Sacramento River.

23 As far as CEQA is concerned, the Wildlife  
24 Conservation Board, again they served as lead agency. And  
25 they approved the project back in February of 2007. They

1 also used a categorical exemption, Class 4, minor  
2 alterations to land. And as a responsible agency under  
3 CEQA, we reviewed that independently and we agree that --  
4 or staff agrees that we -- well, we believe their findings  
5 to be adequate for purposes of CEQA.

6 We have in your package, the last page was an  
7 Email on species diversity. However, it did not provide  
8 much detail in terms of the distribution of plants to be  
9 placed within the area. And so you have just been handed  
10 out a color spreadsheet that we obtained back from the  
11 office today that kind of breaks it out amongst the mixed  
12 riparian forest, the valley oak riparian forest,  
13 understory and grasslands, to give us a bit better  
14 definition as to how the area was to be planted.

15 Steve, I'd like to turn this over to you now for  
16 the technical aspects of this. And then we'll be  
17 available for questions again.

18 MR. DAWSON: As this project is about 20 miles  
19 above the federal project, we are in a designated floodway  
20 that is the Board's designated floodway. We are using the  
21 Title 23, standard vegetation, the other sections  
22 applicable to ag use of the property. And with all this  
23 under consideration, we found after considering the  
24 hydraulic report for this site that there was negligible  
25 impact to the designated floodway by either hydraulic

1 impact or debris, because one of the conditions of the  
2 permit is that they shall maintain this to remove debris  
3 after every high water event. So this will not have any  
4 real impact a mile above or a mile below this project  
5 site. So it is compatible with the use as we see it now.

6 That's about as simple as I can state it.

7 PRESIDENT CARTER: Anything else to add?

8 BOARD MEMBER BROWN: I notice the willows up  
9 there, it's suggesting here, are different than what the  
10 Corps of Engineers has spoke to us about. Does that make  
11 any difference? We've got the Goodding willow and the  
12 sandbar willow.

13 MR. DAWSON: No, not at this place. That is only  
14 relating to the levee toe within a project zone. This is  
15 20 miles upstream of any federal project.

16 BOARD MEMBER BROWN: And it's a floodplain area  
17 more than it is a floodway.

18 MR. DAWSON: It is a very shallow flooding area  
19 and overflow. The main channel is quite a ways to the  
20 east. This is a low inundation, a low velocity flowage  
21 area.

22 BOARD MEMBER BROWN: Okay.

23 LEGAL COUNSEL CAHILL: May I ask a question?

24 I thought on consent items we didn't act on them  
25 if we didn't have the Corps of Engineers letter.

1 MR. DAWSON: No, we have done that with the  
2 understanding that they would get them to us by the day of  
3 the meeting. It did not occur at this time.

4 LEGAL COUNSEL CAHILL: So it did not occur. So  
5 this one does not have approval by the Corps of Engineers  
6 on this project?

7 MR. DAWSON: That is correct.

8 PRESIDENT CARTER: Any other questions of staff?

9 Okay.

10 EXECUTIVE OFFICER PUNIA: I think our  
11 recommendation then will be different. That we will seek  
12 Board's approval subject to receiving the U.S. Army Corps  
13 of Engineers letter.

14 PRESIDENT CARTER: Okay. Are there any persons  
15 that want to speak in support of the application?

16 Any persons that want to testify in opposition of  
17 the application?

18 Any general comments?

19 Okay.

20 LEGAL COUNSEL CAHILL: I would just comment that  
21 I'm not sure you want to set the precedent that you start  
22 approving projects when you don't have all the  
23 information. But it's your choice obviously.

24 PRESIDENT CARTER: Okay. Thank you.

25 Does the Board have any other questions of staff?

1 BOARD MEMBER SUAREZ: Yes, sir, I have one.

2 Is there a timing issue in terms of do they have  
3 to go into the site soon and start planting because of  
4 seasonal issues or --

5 MR. DAWSON: I'm sure that is a consideration,  
6 but I don't know the exact parameters of that.

7 BOARD MEMBER SUAREZ: Okay.

8 SENIOR ENGINEER BUTLER: Was there a timing issue  
9 related to the grant?

10 MR. DAWSON: Not that I'm aware of.

11 SECRETARY DOHERTY: Well, then I suggest we set  
12 it aside until such time as we have --

13 VICE-PRESIDENT HODGKINS: Just for my curiosity.

14 This is a designated floodway. Where the federal  
15 government has never spent any money on it, why do we even  
16 seek the Corps's input?

17 MR. DAWSON: We do so to determine that they have  
18 no concerns, where we are not making a decision for them,  
19 where it may have an impact that we do not see. So when  
20 they make that determination it has no impact on any  
21 federal project, we have their comments, which is not an  
22 endorsement or a recommendation.

23 VICE-PRESIDENT HODGKINS: All right. That makes  
24 sense.

25 PRESIDENT CARTER: I have a question.

1           On your chart that you gave us this afternoon, it  
2 appears that they're talking about planting slightly less  
3 than 21,000 plants. And up at the top it talks about row  
4 spacing and spacing in the row of 20 by 11 for both the  
5 riparian forest and the valley oak. Those numbers come up  
6 to about 12,000. So in fact their plant spacing and/or  
7 row spacing is going to be almost double or half of what  
8 they're representing at the top. I don't understand.

9           SENIOR ENGINEER BUTLER: You're talking about the  
10 6930 and 4950?

11          PRESIDENT CARTER: Right.

12          SENIOR ENGINEER BUTLER: Yeah, I was looking at  
13 that.

14          PRESIDENT CARTER: And somehow that translates  
15 down at the bottom of 11,088 and 9900.

16          SENIOR ENGINEER BUTLER: Not knowing the  
17 irrigation processes, it does say total irrigation  
18 emitters. Could it be that a single emitter feeds more  
19 than one plant?

20          PRESIDENT CARTER: Don't know. It says spacing  
21 row and by plant in feet. So I'm assuming that's the  
22 spaces between the rows that they're planting in and the  
23 distance in the row between plants. Twenty feet between  
24 rows and 11 feet between plants is what I'm reading that  
25 as.



1 MR. DAWSON: That is correct.

2 PRESIDENT CARTER: Well, if you multiply that out  
3 and you do the math, it's a little more than half of what  
4 they're saying they're going to plant. So they're talking  
5 about planting. Double that. So somehow there's a  
6 disconnect.

7 SENIOR ENGINEER BUTLER: I understand your  
8 question, Ben. I'm just trying to -- I don't know the  
9 factual answer to your question.

10 PRESIDENT CARTER: Okay. All right  
11 New math.

12 Any other questions of staff?

13 Okay. At this point we'll close the public  
14 testimony section of the hearing. Or maybe I already did  
15 that.

16 But it's closed now.

17 Any other questions?

18 Deliberations?

19 So what's the pleasure of the Board? The staff  
20 is recommending that we adopt the CEQA findings and  
21 approve the permit subject to getting Corps concurrence on  
22 that the project does not have a detrimental effect on the  
23 federal system.

24 SECRETARY DOHERTY: Legal counsel suggested that  
25 that might be a bad idea to go ahead without all of the

1 papers in place. And there was no time limit on this  
2 according to you.

3 PRESIDENT CARTER: So we can either take action  
4 accepting staff's recommendation. We can take action to  
5 deny the permit. Or we can table this item until we have  
6 all the information.

7 What's the Board's pleasure?

8 SECRETARY DOHERTY: I make a motion that we table  
9 the item until all the -- the Corps letter is here.

10 PRESIDENT CARTER: If we do that, I'd like staff  
11 to clarify the planting plan and design, and make sure  
12 those numbers work.

13 Is there a second to that motion?

14 VICE-PRESIDENT HODGKINS: I'll second.

15 PRESIDENT CARTER: Okay. We have a motion and a  
16 second.

17 Any further discussion?

18 BOARD MEMBER SUAREZ: I actually -- a quick  
19 question from staff.

20 Did the applicant understand that your  
21 recommendation was based on an assumption that we were  
22 going to have all the paperwork in place?

23 MR. DAWSON: I believe so, yes.

24 BOARD MEMBER SUAREZ: Thank you.

25 PRESIDENT CARTER: Okay. Any other questions?

1 All right. Mr. Punia, would you call the roll,  
2 please.

3 EXECUTIVE OFFICER PUNIA: Board Member Emma  
4 Suarez?

5 BOARD MEMBER SUAREZ: Aye.

6 EXECUTIVE OFFICER PUNIA: Board Vice-President  
7 Butch Hodgkins?

8 VICE-PRESIDENT HODGKINS: Aye.

9 EXECUTIVE OFFICER PUNIA: Board Member John  
10 Brown?

11 BOARD MEMBER BROWN: A nay.

12 EXECUTIVE OFFICER PUNIA: Board Member Lady Bug?

13 SECRETARY DOHERTY: Aye.

14 EXECUTIVE OFFICER PUNIA: Board President Ben  
15 Carter?

16 PRESIDENT CARTER: Aye.

17 So the motion carries 4 to 1, with Ms. Rie  
18 absent.

19 All right. Thank you very much, gentlemen.

20 Now, we'll move on to Item 8P.

21 I will close the hearing for Item 80, which was  
22 Permit No. 18374.

23 And we'll move on to Permit No. 18376, which is  
24 consider approval of Permit No. 18376 to plant native  
25 trees, shrubs vines within the designated floodway on the

1 left, or east, bank of Sacramento River in Glenn County.

2 Mr. Butler.

3 (Thereupon an overhead presentation was

4 Presented as follows.)

5 SENIOR ENGINEER BUTLER: Okay. This is  
6 Application 18376. The applicant is the California  
7 Department of Fish and Game. They are requesting a permit  
8 to plant -- to originally plant 35,000 native trees,  
9 shrubs and vines over 195 acres within the designated  
10 floodway of the left, or east, bank of the Sacramento  
11 River. The project is located north of Hamilton City and  
12 east of Interstate 5 in Glenn County in the Wilson Landing  
13 Unit of the Sacramento River wildlife area.

14 Mr. Tad Alexander will be making some comments  
15 later on behalf of the applicant. And my understanding is  
16 there are some modifications to those total acreage and  
17 planting numbers that he will be providing.

18 Again, we have not received our standard 208-10  
19 letter from the Corps for this project. We were  
20 anticipating it, but it has not arrived yet. And there's  
21 no non-federal or local maintaining agency for this  
22 project.

23 The CEQA findings, as in our last permit  
24 application, were prepared by the Department of Fish and  
25 Game Wildlife Conservation Board back in February. They

1 also found this project to be categorically exempt under a  
2 Class 4 categorical exemption from minor alterations to  
3 land. We have independently reviewed that finding and we  
4 find that we are in agreement with it.

5           The engineering firm of MBK here in Sacramento  
6 prepared a hydraulic impacts analysis for the project.  
7 They used a Unet 1D hydraulic model, same model as, if you  
8 recall, was used for the Natomas evaluations by SAFCA.  
9 And they determined that -- they actually artificially  
10 increased the roughness factor that would typically be  
11 used for this type of vegetation to do a more conservative  
12 analysis. And they still were able to find no impacts to  
13 the -- no hydraulic impacts as a result of the project.

14           Mr. Alexander has some very good graphics that I  
15 will leave to him to show you, which lay out the project  
16 visually.

17           And most of this project sits in an old oxbow off  
18 the Sacramento River. So it is a water -- in high water  
19 it provides storage rather than conveyance. So even with  
20 the high number of plantings, the modeling finds that  
21 there is still plenty of storage capacity even with all  
22 those trees and plants in there, and that there is not --  
23 this is not like planting right where the high water would  
24 be flowing through. The water backs up into this area.

25           With that, I would like to ask Steve to provide

1 any further comments.

2 And then, as I said, I believe you'll find Mr.  
3 Alexander's slides to help provide a better understanding  
4 visually of the scope of the project.

5 MR. DAWSON: Eric has stated most of the  
6 technical concerns. This project is similar to the other  
7 previous project that we just discussed. As this is sort  
8 of a backwater or storage area, the conveyance is not  
9 really a critical component. This area would be an  
10 excellent site for this kind of a project. And it again  
11 is compatible with the use of the floodway fund in Title  
12 23.

13 We have a person behind -- that's going to come  
14 on behind me - Tad - and he will explain the project. He  
15 is the project proponents' consultant and he can give you  
16 a better overview of this project.

17 So with that, I'd like to turn it over to him.

18 PRESIDENT CARTER: Are there any questions of  
19 staff?

20 SECRETARY DOHERTY: Yes, I have one.

21 Is it the responsibility of the applicant or is  
22 it yours to call the Corps of Engineers for the 208-10?

23 MR. DAWSON: It is ours.

24 SECRETARY DOHERTY: Oh, okay. And did you talk  
25 to them --

1           MR. DAWSON: Yes, I did, and they have not  
2 responded. The letter has not been received. But we did  
3 discuss this somewhat. And they are -- I'm waiting for  
4 their official response by letter, which I have not  
5 received. I was expecting it today.

6           PRESIDENT CARTER: Okay. So we've not received  
7 any official correspondence from the Corps on this  
8 project?

9           MR. DAWSON: That is correct.

10          PRESIDENT CARTER: Okay. Any other questions of  
11 staff?

12          BOARD MEMBER BROWN: No questions. But I'll make  
13 maybe a statement.

14          And I had some concerns about the density of the  
15 plantings and exactly where they were going. Those  
16 concerns have been adequately answered, Mr. Chairman, as  
17 far as I'm concerned. It doesn't -- you still have the  
18 issue of what our legal counsel has suggested to us. But  
19 my concerns have been answered. Thank you.

20          PRESIDENT CARTER: Okay.

21          All right. Mr. Alexander, you were going to  
22 speak on behalf of the application?

23          MR. ALEXANDER: Good afternoon.

24          (Thereupon an overhead presentation was  
25 Presented as follows.)

1           MR. ALEXANDER: For the record, Tad Alexander  
2 with River Partners.

3           I'm going to go ahead and move through this  
4 quickly and get to the map. I think the map -- you can  
5 see the mouse, right?

6           So I think the map shows us pretty well what  
7 we're looking at. This is the project area the we'll be  
8 looking -- that we'll be working in. We've got trees  
9 around to the side. This is the channel moving through  
10 here. The levee that is there follows this area right  
11 here.

12          And I think one of the most important things for  
13 us to take a look at is on the MBK letter. Does everybody  
14 have the MBK letter? Was that part of the packet or no?

15          SENIOR ENGINEER BUTLER: I don't think have it,  
16 no.

17          MR. ALEXANDER: Okay. I do have some copies.

18          PRESIDENT CARTER: I don't think we have that.

19          MR. ALEXANDER: When MBK took a look at this,  
20 They did use the 2000 Army Corps model. And before they  
21 did the artificial increase in roughness, there was no  
22 impact based upon the density of which we were going to  
23 plant. They did increase the roughness to 20 percent --  
24 or by 20 percent and there still was no effect.

25                               --o0o--



1           MR. ALEXANDER: This next slide -- well, we're  
2 actually going to be changing the density. After our due  
3 diligence period we discovered that the soil will not  
4 support as many woody species as we had planned to put in.  
5 And so actually we'll be making a change to about 100  
6 acres of woody species and about 95 acres of native grass.  
7 And that's going to reduce the roughness.

8           Any other questions?

9           Oh, in addition, there are no elderberries going  
10 out at this site.

11          PRESIDENT CARTER: I'm sorry. What was that?

12          MR. ALEXANDER: There are no elderberries going  
13 in at this site.

14          PRESIDENT CARTER: If you're planting a hundred  
15 acres of woody vegetation and, you said, 90 acres of --

16          MR. ALEXANDER: -- 95 acres.

17          PRESIDENT CARTER: -- 95 acres of grasslands, are  
18 you contemplating a similar plant density as you were  
19 prior to this change in --

20          MR. ALEXANDER: Correct, the density will remain  
21 the same. It's just a shift in acreage.

22          PRESIDENT CARTER: What is that density?

23          MR. ALEXANDER: Approximately 200. It depends on  
24 what soils are out there. And that's going to dictate a  
25 lot to us as far as irrigation needs and how we can get

1 emitters in line. And there's a lot of other things that  
2 play into what the actual density is. But I believe  
3 there's a range in there. And typically do plant at about  
4 20 by 10s -- 20 foot by 10 foot spacing.

5 PRESIDENT CARTER: Okay. Similar density to the  
6 last application?

7 MR. ALEXANDER: Correct.

8 PRESIDENT CARTER: Any questions for Mr.  
9 Alexander?

10 VICE-PRESIDENT HODGKINS: Mr. Alexander, are  
11 there any constraints here from a timeline if the Board  
12 wanted to wait until we hear from the Corps?

13 MR. ALEXANDER: There are -- the grant was  
14 awarded in 2007. It's a three-year grant. And so there  
15 is a time -- an end to the grant.

16 VICE-PRESIDENT HODGKINS: But one more month  
17 isn't going to make much difference?

18 MR. ALEXANDER: One more month probably wouldn't  
19 make a difference, correct.

20 PRESIDENT CARTER: Okay. Any other questions?

21 Thank you, Mr. Alexander.

22 Are there any people out there that wish to  
23 testify in opposition to the application?

24 Are there comments?

25 Staff wish to add anything?

1           Okay. We will close the public testimony portion  
2 of the hearing at this time and move on to deliberations  
3 of the Board.

4           Any discussion among the Board? Questions?

5           And I assume the legal advice is the same as the  
6 last one?

7           LEGAL COUNSEL CAHILL: If the Board can think --  
8 if the staff can propose a principled reason why these are  
9 different because they're not in the core area of  
10 jurisdiction, it seems that complete information would  
11 include a statement by the Corps saying, "We have no  
12 interest." That's what we're expecting on these.

13           You know, I hate to hold up good projects too.  
14 So it could be that if you conditioned it on -- and if we  
15 do this, we should go back to the last one and be  
16 consistent -- you know, that if you conditioned it on  
17 receiving a letter from the Corps saying they have no  
18 objection, that's all you would expect from this Corps  
19 letter? You wouldn't expect conditions in it?

20           MR. DAWSON: Yes, that is correct.

21           LEGAL COUNSEL CAHILL: That's for the Board. I  
22 mean -- but whatever you do this meeting, then --

23           BOARD MEMBER BROWN: Mr. Chairman?

24           PRESIDENT CARTER: I'm not prepared to revisit 80  
25 in this meeting.

1           So we're considering 8P at this point.

2           BOARD MEMBER SUAREZ: Well, I appreciate what Ms.  
3 Cahill is saying. We probably don't want to look like  
4 we're just arbitrary and capricious, saying yeah on one  
5 and no on the other. But as I recall, it wasn't just the  
6 issue of the Corps comments that we were waiting to get  
7 answers. There was a specific question that President  
8 Carter had in terms of -- I believe it was density, that  
9 we didn't have an answer. So to me that's a substantial  
10 and a significant extension --

11          BOARD MEMBER BROWN: I think this is a good  
12 project, Mr. Chairman, in that it's more of a reservoir.  
13 And I believe, if anything, the density of the trees back  
14 there certainly would not be an impediment, maybe even  
15 provide a little of assistance in retarding some more  
16 water.

17          And like Ginny says, I hate to hold up a good  
18 project. I understand the precedent we might be setting  
19 if we continue to vote on the premises that the Corps of  
20 Engineers approval is forthcoming.

21          But I think this is a good project. And I'll put  
22 a motion on the floor even though that we're not being  
23 consistent here. I'll put a motion on the floor that we  
24 approve this project as presented.

25          BOARD MEMBER RIE: Second.

1           BOARD MEMBER BROWN: But with the caveat that the  
2 General Manager approve it after we received the Corps's  
3 okay. Is that okay with the second?

4           BOARD MEMBER RIE: Yes. With those  
5 modifications, I second.

6           PRESIDENT CARTER: So your motion is to adopt the  
7 CEQA findings and approve the permit subject to receiving  
8 Corps correspondence that is not detrimental to the  
9 federal project.

10          BOARD MEMBER BROWN: Yeah. And I'd like to make  
11 a caveat statement, not a requirement. But as a caution  
12 to the Board, that I think you understand -- I mean a  
13 caution to the staff. But I think you understand the  
14 Board's feeling about receiving information that's not  
15 complete and betting on the come. We don't like to do  
16 that. But sometimes it's the only way to get things done  
17 expediently. But those should be exceptions to the rule.

18          And in that spirit, Mr. Chairman, I make the  
19 motion.

20          PRESIDENT CARTER: And we have a second.

21          BOARD MEMBER RIE: Second again.

22          PRESIDENT CARTER: Okay. Any further discussion?

23          Okay. Mr. Punia, would you call the roll,  
24 please.

25          EXECUTIVE OFFICER PUNIA: Board Member Emma

1 Suarez?

2 BOARD MEMBER SUAREZ: Aye.

3 EXECUTIVE OFFICER PUNIA: Board Vice-President

4 Butch Hodgkins?

5 VICE-PRESIDENT HODGKINS: Aye.

6 EXECUTIVE OFFICER PUNIA: Board Member Teri Rie?

7 BOARD MEMBER RIE: Aye.

8 EXECUTIVE OFFICER PUNIA: Board Member John

9 Brown?

10 BOARD MEMBER BROWN: Aye.

11 EXECUTIVE OFFICER PUNIA: Board Member Lady Bug?

12 SECRETARY DOHERTY: Aye.

13 EXECUTIVE OFFICER PUNIA: Board President Ben

14 Carter?

15 PRESIDENT CARTER: Aye.

16 The motion carries unanimously.

17 Thank you very much.

18 All right. Ladies and gentlemen, we are going to

19 now return to item -- I believe it was 11 --

20 EXECUTIVE OFFICER PUNIA: Yes.

21 PRESIDENT CARTER: -- which we -- I'm sorry?

22 SECRETARY DOHERTY: Didn't we bump 8E for

23 discussion this morning?

24 PRESIDENT CARTER: No. No, we didn't.

25 EXECUTIVE OFFICER PUNIA: We covered all three.

1           PRESIDENT CARTER:  So we're going to consider  
2   Item 11, which we tabled from this morning, Memorandum of  
3   Agreement between the Central Valley Flood Protection  
4   Board and California Department of Water Resources.

5           The issue that the Board had expressed concern  
6   over was current past practices with regard to some of the  
7   real estate functions as being delegated in the proposed  
8   MOA under Item No. 11 on page 8.  And the question was  
9   raised as to whether or not we could or it was appropriate  
10  to delegate the authority to sign deeds to DWR.

11          So what did we find out about that?

12          LEGAL COUNSEL CAHILL:  We found a delegation  
13   dating from 1994 where the Board did delegate authority to  
14   execute agreements for the acquisition of interest in real  
15   property to the Department of Water Resources.  But we  
16   also have Member Rie's own experience when she was  
17   Secretary of the Board where she did in fact sign the  
18   actual documents where the San Joaquin Drainage District  
19   was acquiring property.

20          And so Ward Tabor of DWR is here.  He can  
21   probably speak to the recent practice.

22          PRESIDENT CARTER:  Could you read the delegation  
23   again, please.  Because it was unclear to me whether or  
24   not that included signing the documents or it was just  
25   negotiating the agreements.

1           LEGAL COUNSEL CAHILL: "The following delegations  
2 of Board authority are hereby made to the Director of the  
3 Department of Water Resources with the authority to  
4 redelegate: Authority to execute" -- which would be  
5 sign -- "agreements for acquisition of interests in real  
6 property and settle condemnation cases where the project  
7 has been approved by the Board."

8           Member Rie's concern is not -- is that this may  
9 not even be controlled by recent precedent. It may be  
10 controlled by the question of whether this authority to  
11 actually sign the deeds is in fact delegable, as I  
12 understand it.

13           BOARD MEMBER SUAREZ: Ms. Cahill, and how do --  
14 I'm trying to reconcile that with A4, consummation and  
15 execution of all non -- transactions except for the leases  
16 and conveyances of real estate.

17           LEGAL COUNSEL CAHILL: I think A -- don't you  
18 think A4 is consistent with D -- 4D on the same page?

19           Oh, I see. Yeah, it's left out of 4 and then  
20 it's included in D.

21           PRESIDENT CARTER: Are you guys looking at  
22 documents that I don't have?

23           (Laughter.)

24           BOARD MEMBER SUAREZ: It's a secret document.

25           PRESIDENT CARTER: Where is 4A and where is 4D?



1 (Laughter.)

2 STAFF COUNSEL FINCH: I might need to go make  
3 more copies.

4 LEGAL COUNSEL CAHILL: This is in a 1994  
5 delegation. At this point it's probably historic in  
6 interest. The real question is, now that the legislation  
7 has made the Board more independent from DWR, do Board  
8 members have to sign the real estate deeds? We certainly  
9 want DWR to continue to do the negotiations, the  
10 preparations, the lining up, the -- everything up to that  
11 final moment. And the question for the Board is going to  
12 be, do you want to keep within the Board's officers the  
13 ability to actually sign the deeds?

14 So I think we'd like to hear from Ward Tabor.

15 STAFF COUNSEL TABOR: Good afternoon, members of  
16 the Board.

17 I think you have before you Resolution 94-15. I  
18 don't know whether or not this is still an active -- a  
19 live document. I just don't know. I know I worked on it  
20 because my signature's on the last page, as well as  
21 President Carter's mother's signature, as well as the then  
22 president, Mike Stearns.

23 The practice in those days and virtually for the  
24 entire time I've been working on behalf of the Board,  
25 which is 1989, is that when the Department is doing

1 acquisitions on behalf of the Board, the Department on  
2 behalf of the Board signs those right-of-way agreements as  
3 well as signs the acceptances on the deeds. There are  
4 some rare circumstances where the acceptances are signed  
5 by members of the Board staff. Member Rie says she has  
6 signed some acceptances. And that may well be, but I'm  
7 not familiar with those. I know there are some, for  
8 example, joint use agreements that the Board executes in  
9 order to implement some of the PL 84-99 and Sac Bank  
10 projects. Your Executive Officer signs those acceptances  
11 as part of that joint use agreement.

12 But in the normal course of business, for at  
13 least the last 19 years, the Department has signed those  
14 acceptances on behalf of the Board. If it's going to be  
15 committing the Board to a right-of-way contract or  
16 settling eminent domain cases, it certainly makes sense I  
17 think for them to do that. If the Board wants to change  
18 that dynamic, that's certainly the Board's prerogative  
19 since this is a delegation from the Board.

20 So this was one element that was -- that the  
21 authority to accept deeds was delegated both to the  
22 General Manager, in those days, as well as to the  
23 Department, because of those circumstances where the  
24 Executive Officer now, General Manager then, was executing  
25 documents on behalf of the Board that were tantamount to

1 accepting title to real property on behalf of the Board.

2 PRESIDENT CARTER: And that was the Executive  
3 Officer that was doing that, or the General Manager at the  
4 time?

5 STAFF COUNSEL TABOR: Yeah, both the General  
6 Manager had that delegated authority as well as the  
7 Department had that delegated authority to execute  
8 acceptances of conveyance.

9 And the language here relative -- that Member  
10 Suarez was referring to, 4A4, the reference was to  
11 conveyances of Board real property, not conveyances to the  
12 Board but conveyances of board property. And it was clear  
13 that DWR had no authority to convey Board property. That  
14 was a Board function. The Board would decide if it was  
15 going to convey property. And clearly that was not a  
16 delegated and probably could not be a delegated function.

17 But I believe it is appropriate, since DWR is  
18 acting as staff for the Board pursuant to statute, if the  
19 Board deem it appropriate, that the Board allow them to  
20 accept title. Because as a practical matter, the Board  
21 has many, many projects that are in the planning phase  
22 going to construction and these acceptances happen quite  
23 regularly, and it's -- and it's something that's a  
24 traditional function that's done within DWR. Currently  
25 the function is done by the Chief of the Division of

1 Engineering. In the old days, back in '94, they were  
2 signed by the Chief of the Division of Land and Right of  
3 Way. That division got collapsed into the Division of  
4 Engineering.

5 BOARD MEMBER SUAREZ: Just two questions real  
6 quick.

7 Does the current draft agreement make the  
8 distinction that you just made between the signature for  
9 property that's ours to give or to accept?

10 STAFF COUNSEL TABOR: I don't believe the MOA  
11 talks about any delegation to the Department of anything  
12 about conveying Board property to anybody else.

13 It does specifically talk about delegation to the  
14 Department for the acquisition of property on behalf of  
15 the Board.

16 BOARD MEMBER SUAREZ: And the second question,  
17 which is not directly related to this - and I can wait if  
18 somebody else wants to stick to the real estate issue -  
19 but it's one that I need Mr. Tabor to help answer.

20 Should I -- I'll go and ask it.

21 PRESIDENT CARTER: Yes, ask.

22 BOARD MEMBER SUAREZ: I kind of wanted to make  
23 sure that I understood how the agreement reconciled -- or  
24 came together with Article 5 of the Water Code, the  
25 sections dealing with cooperation between the Board and

1 the Department of Water Resources.

2 And I'd like to get a sense that this part of the  
3 code was kind of fleshed out and discussed before you felt  
4 necessary to move into a separate agreement.

5 STAFF COUNSEL TABOR: Well, it was the Board  
6 counsel who drafted the Memorandum of Agreement. So you  
7 might direct that question to Ms. Cahill.

8 But I think certainly the philosophy and intent  
9 behind both parties in negotiating this agreement was to  
10 be supportive of the provisions of the Water Code that  
11 directs the Department to support the Board's activities.

12 BOARD MEMBER SUAREZ: Because I think to me it  
13 goes to the question of the code tells us our authorities,  
14 and then it has a little section that says there's  
15 certain areas where you can work in cooperating with DWR  
16 and -- but beyond that there clearly are not -- you can't  
17 delegate them to DWR. And I just would want to make sure  
18 that our agreement captured that accurately or we didn't  
19 have any inconsistency, because we end up with the code  
20 trumping the MOU.

21 STAFF COUNSEL TABOR: I'm certainly not aware of  
22 any inconsistencies between the MOA and the directives of  
23 the Water Code.

24 BOARD MEMBER SUAREZ: In this particular section  
25 of the Water Code?

1 STAFF COUNSEL TABOR: Any section.

2 Oh, I'd be happy to -- if the Board isn't ready  
3 to take action today, I'd be happy to meet with Board  
4 counsel and discuss this matter to our mutual  
5 satisfaction.

6 PRESIDENT CARTER: Ms. Cahill.

7 BOARD MEMBER SUAREZ: I would like to be  
8 clarified that that was part of the mix of the discussion.

9 LEGAL COUNSEL CAHILL: Yes, the law provides that  
10 the Board is independent from DWR, and specifically  
11 mentions your ability, for example, to have your own  
12 counsel. And we certainly have transferred now from DWR's  
13 sort of overall budget -- someone correct me if I get it  
14 wrong here -- to a specific program or line item in their  
15 budget that covers the Board and the Board members and the  
16 direct Board staff and those functions that the Board does  
17 with its own staff. But it's still necessary for you to  
18 have considerable amount of support from employees of DWR.  
19 And so we're trying to provide that control that you want  
20 over your own direct staff, over the hiring of your own  
21 staff, over the work of your own staff, while still  
22 realizing that there are shared positions that we're not  
23 going to move on to your own staff but that we still need  
24 in order for the Board to function as it needs to. And I  
25 think that was the goal of this agreement.

1           BOARD MEMBER SUAREZ:  If I may follow up.  Was  
2   there a, as you were drafting and working on the  
3   agreement, a review of sections 8685 through 8698 to make  
4   sure that the agreement was consistent with what's in the  
5   law?  Not new law but existing law or old law.

6           LEGAL COUNSEL CAHILL:  You know, I don't think  
7   there was.

8           BOARD MEMBER SUAREZ:  Thank you.

9           PRESIDENT CARTER:  Any other questions?

10          So we have -- with regard to the real estate  
11   question, we had a prior delegation, which we don't --  
12   we're not sure -- we don't know if it was still in  
13   effect -- or still in effect today, regarding or  
14   addressing a portion of the real estate concerns.  There  
15   still is the question as to whether or not it is -- the  
16   Board is able to delegate the authority to sign or execute  
17   acquisitions.  So there's that issue with the -- or there  
18   remains that question.

19          Can anybody shed any light on that?

20          LEGAL COUNSEL CAHILL:  Yeah, I think it probably  
21   would be advisable to put this over another month and let  
22   us take an in-depth view of the question of delegability.

23          PRESIDENT CARTER:  Okay.  And, in addition, have  
24   an explicit review of the consistency of the cooperation  
25   relative to --

1           LEGAL COUNSEL CAHILL: Yes, yes. Our focus was  
2 on the new legislation and not the old one.

3           BOARD MEMBER SUAREZ: But if I may. I think  
4 that's an important point that I keep bringing up again.  
5 The new legislation did give us some new authorities, but  
6 it did not eliminate our existing authorities or, for that  
7 matter, eliminate or change our existing relationship with  
8 DWR. So in many ways we don't need to be reinventing the  
9 wheel, because those things don't change. So that's what  
10 made me think about it.

11          LEGAL COUNSEL CAHILL: Thank you.

12          PRESIDENT CARTER: Okay.

13          BOARD MEMBER RIE: I have a new item. I  
14 apologize for not being here last month when you guys  
15 talked about this.

16          Item 12 in the MOA is --

17          SECRETARY DOHERTY: The new one or the old one?

18          PRESIDENT CARTER: This is on page 9, item 12?

19          BOARD MEMBER RIE: Yeah.

20          PRESIDENT CARTER: Okay.

21          BOARD MEMBER RIE: I don't know if it's the new  
22 one or the old one.

23          PRESIDENT CARTER: It's the new one.

24          BOARD MEMBER RIE: The new one.

25          Okay. On the new one we're delegating authority



1 to DWR to prepare and review NEPA and CEQA documents. And  
2 I'm just wondering if we want to clarify that a bit, or  
3 perhaps the staff should have some input on this. Because  
4 often we have projects that come before the Board, the  
5 CEQA document has already been certified, and our staff  
6 may or may not agree with the CEQA findings. So in the  
7 process of the permit review, we're asking applicants to  
8 go back and do additional hydraulic analysis. Their CEQA  
9 documents may say there's no impact. But to satisfy our  
10 staff, we've had applicants go back and redo analysis  
11 repeatedly.

12           So I'm just wondering if we want to reserve the  
13 right to look at some of these CEQA documents as they  
14 relate to projects that are going to be approved by the  
15 Board and make sure our comments are incorporated early in  
16 the process. If we're going to ask for a transfer of risk  
17 analysis or additional hydraulic analysis other than  
18 what's included in the EIRs, we want to make sure we get  
19 those comments from our staff included early in the  
20 process.

21           So since we're going to most likely wait a month  
22 before we approve this, I'm just wondering if the staff,  
23 especially Gary, Eric, Jay, if you guys could really think  
24 about that and maybe reserve some of these CEQA reviews  
25 for Board staff.

1           And then the last sentence of Item 12, "DWR shall  
2 administer the Delta Levee Maintenance Subventions  
3 Program," I think we need a little bit more clarification  
4 there. Yes, it's true DWR does administer the program.  
5 But each year the Board approves the budget for the  
6 program.

7           So I'm wondering if we're delegating the budget  
8 authority or if we're retaining the budget authority. So  
9 perhaps a bit of clarification is needed there as well.

10           PRESIDENT CARTER: The intent of the MOA was not  
11 to delegate the budget approval authority. We did have  
12 that discussion as a team with DWR, and there was  
13 concurrence on that.

14           On the NEPA, CEQA, I understand -- or I hear your  
15 concern. I don't see anything there that precludes the  
16 Board staff from participating in the preparation and/or  
17 review of those documents. It just says that DWR will  
18 coordinate the preparation of those and review of those.  
19 So the intent was not to exclude or preclude the Board  
20 staff from participating in those activities. If we need  
21 to be clearer on that, we should, I guess.

22           BOARD MEMBER RIE: I'm just thinking that maybe  
23 you guys should talk about it and maybe look at getting  
24 funding for a staff person to look at those documents very  
25 carefully, just so we're included very early in the

1 process. If there's a specific hydraulic analysis we want  
2 included for these levee projects, we should be commenting  
3 on the NOP. And if we get into the routine that DWR is  
4 commenting and just putting in the standard comment, "This  
5 project will require a Board permit," and then the  
6 document gets certified by the lead agency, and Board  
7 staff misses that opportunity to comment because DWR's  
8 taking care of it. Then we have to ask for analysis very  
9 late in the process. So it's an opportunity to probably  
10 justify a staff person, because I think the need is there.  
11 I know Eric is spending a lot of time working on the CEQA  
12 findings for all these permits, and it could be an  
13 opportunity.

14 PRESIDENT CARTER: I think -- and there is -- the  
15 Board has requested at least one additional staff person  
16 for environmental review as part of the BCP for this  
17 budget that is being under consideration right now. And  
18 we are, under our current -- we have an environmental  
19 review committee, do we not?

20 EXECUTIVE OFFICER PUNIA: Let me answer this  
21 question.

22 John Yago's section has an environmental  
23 position, but he's not able to fill that position. He's  
24 trying to fill that position. In the meantime Eric is  
25 helping.

1           Then we have one position in our budget which, if  
2 and when that budget will be approved for this fiscal  
3 year, then we will be able to hire another environmental  
4 specialist for the direct staff of the Board.

5           PRESIDENT CARTER: So I ask my question again.  
6 Do we have an environmental review committee now, today?

7           EXECUTIVE OFFICER PUNIA: It's a single-person  
8 review at this time. Eric coordinates to the best of his  
9 ability until John Yago can fulfill his position.

10          PRESIDENT CARTER: My understanding was in the  
11 past, before we were short staffed, we had an  
12 environmental review committee that was of a cast of maybe  
13 a half dozen people that sat down and reviewed  
14 environmental documents on the permits that came through.  
15 Today we do not have that, you're saying?

16          EXECUTIVE OFFICER PUNIA: That's correct. Eric  
17 may be able to --

18          SENIOR ENGINEER BUTLER: I can clarify that.

19          Before Chris Hewitt left to go to State Lands  
20 Commission, he would routinely package up a group of maybe  
21 10 to 12 permit applications a month, not necessarily the  
22 ones that you were about to hear. But as he did his  
23 initial CEQA review, he would coordinate with  
24 representatives from State Lands Commission and Fish and  
25 Game, he would send it out via Email. And he basically

1 said, "Do you guys have any comments on this? This is  
2 what I know about the project so far." And then they  
3 would correspond back and forth. And then Chris would  
4 provide that information to Jay on a monthly basis that --  
5 basically notifying Jay that he had let State Lands and  
6 Fish and Game know that these projects were about to come  
7 up for the Board's decision.

8           Since Chris left early February, I started doing  
9 this in April. My time is pretty much filled up just  
10 preparing the CEQA findings and doing other technical  
11 review for each month's Board meeting. And I haven't been  
12 able to reestablish that committee on a monthly basis.  
13 It's our intent to do that. I think I'm getting a better  
14 ability to be more efficient at the work I'm doing with  
15 CEQA as I'm becoming more familiar with the process. It's  
16 my hope to reestablish that soon.

17           In addition to what Jay said about the vacant  
18 position in the Floodway Protection Section, once the  
19 Governor's budget is signed and assuming he doesn't blue  
20 pencil anything, we will have one more environmental  
21 scientist position to work on Prop 1E funded projects,  
22 which would include our EIP work and future EIP and flood  
23 safe activities.

24           And it's my hope that when we get John's position  
25 filled, we'll now have two people doing environmental

1 review, that we can spin that process back up again to  
2 better coordinate with our sister resource agencies.

3 PRESIDENT CARTER: And so these are environmental  
4 documents that we're the quarterback on the review  
5 process.

6 Now, in the case where DWR is the quarterback,  
7 namely with the Project Development Branch, does our staff  
8 get involved in review of those documents early on or are  
9 they just -- they come to the staff when we get the  
10 package for the Board meeting?

11 SENIOR ENGINEER BUTLER: A little of both. They  
12 definitely -- we review them when they come to the  
13 package, when the permit is deemed ready for us to prepare  
14 our staff reports and bring them to you. We should be  
15 looking at them when they get issued by the -- you know,  
16 when an agency files a notice of preparation and they come  
17 out with a draft EIR, whatever, we should be able to  
18 review that.

19 Right now, with just myself doing it, I'm not  
20 able to keep up with that process.

21 PRESIDENT CARTER: So, Teri, what you're asking  
22 for is for DWR to actively try and engage the Board staff  
23 in early review of the CEQA documents and the NEPA  
24 documents?

25 BOARD MEMBER RIE: I --

1           PRESIDENT CARTER: Do we want to make that  
2 request in the MOA?

3           BOARD MEMBER RIE: I don't think we should rely  
4 on DWR to make sure that we see it. I think we need to be  
5 proactive and make sure we're involved at the NOP stage.  
6 And I don't think we have enough staff today, perhaps not  
7 even after the budget is approved, to stay on top of that.

8           So, I'm just bringing it up just as a discussion  
9 point. I think the staff is probably more prepared to  
10 discuss that and what the solution should be. But I  
11 definitely think it warrants further discussion.

12          PRESIDENT CARTER: And I'm just trying to get at  
13 what we would change in the MOA.

14          EXECUTIVE OFFICER PUNIA: I think that's more or  
15 less budget change proposal. We'll discuss it among  
16 ourselves. And if we need to put another request  
17 following the year budget change proposal, we will put the  
18 request there. I don't think we need to modify the MOA  
19 unless the Board Member Teri Rie feels otherwise.

20          BOARD MEMBER RIE: Okay then. I would suggest  
21 that we put something in there that is an agreement with  
22 DWR to ensure we have the adequate staffing, whether it's  
23 within our staff or DWR's staff, to make sure we have the  
24 environmental review committee covered, that we have  
25 enough staff to get comments in early on the NOPs and

1 we're not so far behind that we just can't do it and then  
2 the 11th hour we're asking for additional hydraulic  
3 analysis because we were understaffed in the first place.

4 So I think further discussion needs to happen  
5 with regard to making sure that we're involved early in  
6 the process and our interests are covered.

7 So I would suggest some changes.

8 PRESIDENT CARTER: Okay. Anything else?

9 BOARD MEMBER RIE: Yes. This is a question for  
10 Mr. Qualley.

11 Early in the day you told the Board that DWR was  
12 ready to sign this agreement. And I don't know if you  
13 guys have thoroughly reviewed the schedule that the Board  
14 has placed in this agreement. But there's some pretty  
15 long lead times for DWR to provide information to the  
16 Board to get on the agenda. The minimum amount of time is  
17 30 days, and ranges from 30 days to 45 to 60 days, to  
18 receive information from DWR staff for items you need  
19 approved by the Board. And we're getting items five  
20 minutes before the hearing.

21 So I'm just wondering if this is something you  
22 can really agree to.

23 DWR DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

24 Well, that's one of the things that was talked  
25 about in the group. In fact, there was -- I should have



1 brought the latest version of the agreement up here.  
2 There was language in there that we would endeavor to meet  
3 those timelines and there was some discussion that that,  
4 you know, wasn't specific enough.

5 I think the reality of the situation is -- I mean  
6 we -- you know, we understand that the Board needs to have  
7 information in advance. But it's also a reality that  
8 there are going to be circumstances that come up where  
9 that's going to be impossible to do.

10 I think the best that we can do in terms of  
11 either the MOA or in our relationship we have with the  
12 Board, you know, is to pledge to make every effort to get  
13 things to the Board in a timely manner. But if there are  
14 instances where there's circumstances beyond our control,  
15 information coming in from some other entity, then that's  
16 a decision -- you know, we'll be -- you know, one of the  
17 key features is is for us to stay in close communication  
18 with Board staff and particularly with the Executive  
19 Officer, you know, to give the Board a heads-up when we  
20 become aware that, you know, for a particular item there  
21 might be a problem getting something within a certain time  
22 frame; and then we work in concert, you know, depending on  
23 how critical that particular item is -- I mean because  
24 items are going to come up that are, you know, obviously  
25 very important for the applicant, but important for DWR,

1 important for the Board -- the Jacobs Lane project, for  
2 example. I mean I think everybody would agree that that  
3 violated every principle of getting information in a  
4 timely manner. And I don't think any of us want to see a  
5 lot of those circumstances. But the bottom line is is,  
6 you know, everybody wanted to make that project happen.  
7 And through a great effort on everyone's part, we were  
8 able to do that.

9           So I don't know if that answers your question.  
10 You know, we understand the Board's timelines and we  
11 understand it's our responsibility to do everything we can  
12 to meet those timelines. If we, you know, become aware of  
13 circumstances where we would have difficulty meeting  
14 certain timelines, it's our obligation to communicate that  
15 to your staff -- you know, to your Executive Officer and  
16 then other staff, and then we, you know, make a joint  
17 decision on how to move forward.

18           BOARD MEMBER RIE: I'm just wondering if you  
19 think it's reasonable to submit items 60 days in advance,  
20 when it's more typical month to month that we're getting  
21 the items maybe two or three weeks in advance of a Board  
22 meeting.

23           DWR DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

24           Sixty days is an awful long lead time.  
25 There's -- you know, depending on the type of information,

1 you know, some things can be submitted that far ahead of  
2 time. But I guess I was -- I guess my recollection that  
3 in most cases it was like, you know, 30 days ahead of  
4 time, and then to have information in time for the  
5 mailing. I'll be honest with you, I don't remember a  
6 particular item that had 60 days.

7 BOARD MEMBER RIE: I think there's one item on  
8 this spreadsheet that's 30 days. Everything else says 45  
9 to 60, with the majority requiring 60 days advance notice.

10 EXECUTIVE OFFICER PUNIA: There is a language in  
11 the text that when there's an important public safety  
12 project, that these guidelines may be waived. There's a  
13 language.

14 BOARD MEMBER RIE: Yeah. But I think every  
15 project that DWR brings before our Board is related to  
16 public safety.

17 So, I'm just wondering if we should maybe just  
18 simplify this and say DWR agrees to make every effort to  
19 submit information in advance, and leave it at that.  
20 Because I think every project is urgent, every project is  
21 for public safety.

22 PRESIDENT CARTER: We did as a committee -- as a  
23 group we did have a fairly explicit discussion about this  
24 topic last Wednesday when we were trying to finalize this  
25 stuff. And the suggestion by DWR was language to that

1 effect. And the Board has been struggling with getting  
2 information on a timely basis, not just with DWR, but with  
3 all applicants. And the Board Executive Committee felt  
4 that it was important enough to be specific about what the  
5 Board's expectations were and set a standard that the  
6 Board could live with, and an expectation of all  
7 applicants, not just DWR. And then leave room for  
8 exceptions to the standard at the discretion of the  
9 Executive Officer.

10 And DWR, that was not their preferred stance, but  
11 they agreed to that. They understood. And the real  
12 spirit of this is, yes, everybody make as concerted an  
13 effort, try and meet the standard. If you can't, tell the  
14 Executive Officer as far in advance as you can so that the  
15 Executive Officer can manage the expectations of the  
16 Board. Because the Board staff and DWR constantly get  
17 beat up by the Board because they don't have stuff in on  
18 time. So we wanted to establish a standard and an  
19 expectation, with the out that there can be exceptions to  
20 the standard. And so that was the spirit by which this  
21 was stated.

22 I would suggest that we do not want to be  
23 unspecific about what our expectations are, because that  
24 leaves us open. And whenever we do run up against  
25 problems, we don't have any standard to fall back on. And

1 so we don't -- and we haven't established expectations.  
2 And so how can we demand things if we haven't established  
3 expectations of our applicants?

4 So that was the spirit by which we drafted the  
5 Exhibit 2, which kind of outlines the expectations of the  
6 Board's own documents.

7 BOARD MEMBER RIE: I asked Board counsel if this  
8 was meant to apply to applicants. And she said this is  
9 only applicable to DWR. So I'm just wondering, are we  
10 holding DWR to a higher standard than we're holding our  
11 applicants to?

12 PRESIDENT CARTER: And the answer is, no, that's  
13 not the intent of the Board. This is an agreement that  
14 does apply only between the Board and DWR. But the intent  
15 is to allow staff to use this as guidance with all the  
16 applicants and be consistent.

17 BOARD MEMBER RIE: Well, I think --

18 PRESIDENT CARTER: And so the exception to the  
19 rule applies to the other applicants besides DWR as well.

20 BOARD MEMBER RIE: Well, I think if we're going  
21 to apply this to applicants, then, you know, we probably  
22 need to give the public some sort of notification that  
23 this is our expectation.

24 PRESIDENT CARTER: If we can finalize this MOA,  
25 it will be a public document. And then we can roll that

1 out as well. But we wanted to finalize the MOA first  
2 before we established a standard on applicants without  
3 having a standard agreed to by DWR as well.

4 DWR DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

5 I wasn't directly involved in the development of  
6 this table. May I show my ignorance here by asking -- or  
7 stating the assumption that these dates are worked out in  
8 concert with the DWR staff for reasonableness? Because it  
9 sounds like this is going to be put over for 30 days. And  
10 I mean your comments are well taken. I mean obviously we  
11 don't want to sign up for something where there's a  
12 greater expectation. But --

13 PRESIDENT CARTER: No, the table's been part of  
14 the document from -- well, for quite a -- at least the  
15 last two months as it exists today.

16 VICE-PRESIDENT HODGKINS: But I don't think it  
17 was worked out in detailed discussions with DWR.

18 And I do think the intent is to get the Board to  
19 establish what its expectations are. And so for that  
20 reason, I think, while it can stay the way it is as far as  
21 the MOA is concerned, and we can then move forward and  
22 decide whether or not this or something different applies  
23 to the rest of the world, I do think that it makes sense  
24 here -- because I agree with Ben. I mean we have sat up  
25 here and chewed staff both for not getting permits in

1 front of us where the problem has been they didn't have  
2 the information from the applicant and for bringing the  
3 stuff where they didn't have the information from the  
4 applicant. And it was -- some members thought it was  
5 incomplete staff work.

6 I think it's really important that the Board  
7 focus on what our expectations are and adopt those in a  
8 way where everybody understands where they are.

9 So I guess I'm saying that I would agree with  
10 Teri that it makes sense to take this kind of a document  
11 and put it out in general and let the public comment on it  
12 and let our staff comment on it in more detail perhaps  
13 than they have as to whether these are reasonable periods  
14 of time, and decide if that's our schedule. I don't think  
15 it holds up the MOA in any way, because it very clearly  
16 states that the General Manager has the ability to grant  
17 an exception. And we could simply modify the schedule  
18 when we adopt one for the Board as a whole.

19 But it is something we need to do, so staff has  
20 an understanding of what our expectations are and the  
21 applicants, DWR or otherwise understand that it is the  
22 Board's expectation and they should try and comply with  
23 it.

24 PRESIDENT CARTER: And if -- I mean if we're  
25 putting this over for another month, it doesn't preclude

1 anybody from reviewing it and suggesting changes --

2 DWR DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

3 And I guess --

4 PRESIDENT CARTER: -- to any or all portion of  
5 the document.

6 DWR DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

7 Yeah. And also in the spirit of the discussion  
8 we had on Wednesday, you know, regarding the schedules --  
9 and I guess I wasn't, you know, particularly troubled by  
10 that particular time frame, you know, knowing that we  
11 were -- you know, the main point of the whole thing is  
12 that, you know, we -- this made us aware of what the Board  
13 would desire to have. But if we were in a situation where  
14 we weren't able to achieve that, we needed to communicate  
15 that with the Executive Officer so that the Board knew  
16 that you either were going to get it according to this  
17 time frame or some other time frame, you know, that you'd  
18 been alerted to and has been agreed upon.

19 And it may turn out as we go through time that,  
20 you know, some of these are perfectly reasonable, some of  
21 them maybe they're impossible to achieve as written. And  
22 I don't have any way of knowing which of those are the  
23 case right now. But certainly the commitment -- you know,  
24 this does lay out what your expectations would be, and we  
25 would be maintaining that communication so that you would



1 know if we're not going to meet these timelines.

2 And I will be talking in more detail with staff,  
3 you know. But perhaps there might be some of these that,  
4 based on their experience, we may suggest another time  
5 frame.

6 So I appreciate Board Member Rie bringing this up  
7 for discussion.

8 BOARD MEMBER RIE: And the item that really  
9 concerns me for DWR is your CEQA documents, because often  
10 you guys are having your 30-day reviews up until the day  
11 before the Board meetings and then you're trying to get  
12 the documents approved at that same Board meeting. And  
13 almost every single time we approve a CEQA document, we're  
14 either getting the comments from other agencies read into  
15 the record or they're being handed to us at the Board  
16 meeting.

17 And that's the exception every single time.

18 DWR DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

19 Yeah, and it's kind of the nature of the projects  
20 that we've been trying to, you know, push through. I mean  
21 the schedules are tight all the way around and we're, you  
22 know, trying to get things out to construction and --

23 BOARD MEMBER RIE: So to me it doesn't make any  
24 sense for DWR to say, "We're going to agree to a 30-day  
25 lead time or a 60-day lead time, and the Executive Officer

1 will waive it if it's a public safety issue." And  
2 probably each and every one of those are a public safety  
3 issue. So it doesn't make sense to put it on the list and  
4 shoot for a 30-day or 60-day lead time and then get that  
5 requirement waived for each and every CEQA document.

6 So I think you need to have some discussion with  
7 the environmental group or the floodway group -- I don't  
8 remember what it's -- the group that prepares the CEQA  
9 documents.

10 PRESIDENT CARTER: Project Development Group.

11 BOARD MEMBER RIE: Project Development Group. I  
12 think they need to probably look at the schedules. And,  
13 you know, we're trying to work together and come to  
14 something we can all live with and agree to. And I think  
15 those staff people really need to take a look. And maybe  
16 for Mitigated Neg Dec's maybe we say 10 days is the  
17 minimum time, rather than 30 days or 60 days.

18 So it has to be realistic at the same time. I  
19 don't want you guys to just agree to something just to  
20 move forward and Jay Punia's waiving that requirement at  
21 every Board meeting.

22 DWR DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

23 Well, and then, quite honestly, the language that  
24 I'd suggested is that we would make every effort to  
25 achieve the schedule. And then there was further

1 discussion. And I really think that kind of language  
2 would be more realistic for what we're trying to achieve.

3 BOARD MEMBER RIE: Thank you.

4 PRESIDENT CARTER: So I'm getting a sense it's  
5 the Board's pleasure to put this over for another month,  
6 and we'll -- pending review of the items.

7 And my understanding is we're reviewing the MOA  
8 for consistency with the code in terms of our requirements  
9 and authorities and responsibilities versus DWR's; we are  
10 going to check into the real estate questions; and we are  
11 going to look at the CEQA review to be sure that we have  
12 sufficient staff to conduct environmental review at an  
13 early stage, NOP or earlier; and clarify that the Board  
14 shall approve the Delta Levee Subventions Program budget  
15 and the Exhibit 2 details. Is that all of it?

16 Okay. Very good. If there's no objection, we'll  
17 go ahead and do that. And we will continue this item for  
18 a future meeting

19 Okay. We're on to Item 15, Board Comments and  
20 Task Leader Reports.

21 So this is the time when we invite Board members  
22 to make comments or task leaders to give their reports.

23 So we'll just kind of go down the table.

24 Mr. Brown.

25 BOARD MEMBER BROWN: Thank you, Mr. Chairman. I

1 have a few items here to share with the Board.

2 I had the opportunity a week ago Thursday to meet  
3 with Lester Stahl. He had some questions on the issues of  
4 the State Water Board and conservation projects. And also  
5 the Plumas Pines pre-1914 water right we discussed.

6 I asked him generally what he -- how pleased he  
7 was with our board here, and he was very pleased with it.  
8 And he thinks we have a strong board, and I'll share that  
9 with you.

10 I got an Email from Gary Sawyers, who's an  
11 attorney in Fresno, who was the attorney for the Madera  
12 County Flood Control Water Agency, requesting some  
13 intervention or assistance in trying to clear up some  
14 operation schedules, which I passed on to Jay and Jay is  
15 looking into it and will advise the Board of what our  
16 responsibility or support may be.

17 I provided the presentation to the Auburn Dam  
18 Council on Auburn Dam and water resource issues on August  
19 4th. That went over very well.

20 September 19th, Mr. Chairman, my apologies, but  
21 I'll be out of town and will not be able to attend that  
22 Board meeting on a personal issue.

23 I have a meeting tentatively scheduled with  
24 Dennis Cardoza's -- Congressman Cordoza's office -  
25 probably would be with his staff - on some water issues.

1 And again our staff will brief me on things that we think  
2 that he may be interested in, and trying to stay away  
3 from -- in fact, we will stay away from any ex parte  
4 contact issues should that become a concern. And I'll  
5 need guidance from our staff on what may be coming up that  
6 he or they might be interested in, in addition to just  
7 general water issues within the state.

8 And then the last one is that I'd like for  
9 staff -- or I'll suggest for staff to tentatively schedule  
10 a time and place for the hearing that you've assigned me  
11 to be the hearing officer on. And it may be that if we go  
12 ahead and tentatively schedule something, get it down in  
13 print, it may provide an added incentive for those folks  
14 to do something themselves as opposed to getting our Board  
15 involved, Mr. Chairman.

16 So perhaps, Jay, we can communicate by Email and  
17 see if we can find a place and time, and then pass that  
18 on, and with the hopes that we will not become directly  
19 involved in that issue.

20 EXECUTIVE OFFICER PUNIA: We'll do.

21 BOARD MEMBER BROWN: That's all, Mr. Chairman.

22 PRESIDENT CARTER: Thank you.

23 Ms. Doherty.

24 SECRETARY DOHERTY: I had a letter from Darrel  
25 Longnecker. And I think you probably all got a copy in

1 your packet.

2 PRESIDENT CARTER: Actually he sent personal  
3 letters to each and every one of us.

4 SECRETARY DOHERTY: Well, wasn't that sweet of  
5 him.

6 Do we know how far out his permit is?

7 EXECUTIVE OFFICER PUNIA: It was not addressed to  
8 all the Board members. It came at the last minute. I  
9 think three Board members got this letter.

10 SECRETARY DOHERTY: Do we know how far out his  
11 permit is?

12 EXECUTIVE OFFICER PUNIA: I think Gary may have  
13 exact. He applied for a permit in early this year, if I  
14 remember. Gary will provide you more detail.

15 CHIEF ENGINEER HESTER: I'm trying to recall. I  
16 don't have the exact date, but I believe it was in March  
17 of this year. And the status is that staff is reviewing  
18 the application and coordinating with the Corps of  
19 Engineers' review. This will be an important -- this is  
20 likely to be something that we will need to have a hearing  
21 on and not be on a consent calendar. So we want to make  
22 sure that the Corps has had an adequate time to review it  
23 and give us their feedback on this one.

24 SECRETARY DOHERTY: Okay. Thanks, Gary.

25 BOARD MEMBER RIE: For a driveway?

1 CHIEF ENGINEER HESTER: It's a driveway, but it  
2 is -- there's more to it than that, in that it really  
3 relates to construction of a house.

4 BOARD MEMBER RIE: Well, we had a house or two or  
5 three on consent today.

6 CHIEF ENGINEER HESTER: Yeah. And this is a  
7 house that is not part of the permit application. But  
8 that is the subject of the Corps's review of the location  
9 of the house as it relates to the original ground and the  
10 levee prism.

11 SECRETARY DOHERTY: Okay. Then on 8/7/08, a  
12 meeting was held in Colusa with 13 Fish and Wildlife  
13 representatives regarding the four refuges under their  
14 care and requesting comments of the Comprehensive  
15 Conservation Plan. Five public members were there.

16 Kevin Foerster, head of the group, said work was  
17 being done on the Sutter Bypass because of pressure from  
18 the Rec Board, the Westside Levee District, and RD 108.  
19 He stated that we would be pleased with our tour the  
20 following morning of the bypass.

21 At 6:45 on 8/8/08, Kim Davis, aide to Senator  
22 Annistad; Tom Ellis, Chair of Westside Levee District;  
23 Lewis Bair, Manager of RD 108; and myself met at the  
24 Sutter Yard of DWR.

25 It was an all-encompassing tour led by Karen Hull

1 and Joel Farias. They were both very forthcoming.

2 And, Jim, if I'm going too fast, let me give you  
3 a copy.

4 THE REPORTER: Thank you.

5 SECRETARY DOHERTY: It showed a good beginning,  
6 especially in the southern half. The tules had been so  
7 thick, so rampant, that the tractor got lost from view and  
8 had a very difficult time disking through it. At the very  
9 southern end, near where the Tisdale empties into the  
10 bypass, there's a row of big trees going all the way  
11 across the channel and blocking water flow. They're only  
12 going to increase in size.

13 As we turned north, a large grove of trees was on  
14 our west side projecting into the channel and growing  
15 bigger and thicker every year. They said no plans were in  
16 place to remove this encroachment. They agreed some work  
17 needed to be done there. As viewers, we felt a row of  
18 trees parallel to the canal and levee would be protection  
19 but the intrusion into the channel exceeded what we  
20 considered to be safe for the system of flood protection.

21 Our next stop in the north portion was the "Old  
22 Grove" area. Some underbrush had been cleared and jagged  
23 stumps were very visible. They would surely cut the tires  
24 if the chipper, used on the Bear River area, were to come  
25 in. Mike Peters of Fish and Wildlife, our guide in this



1 section, expressed his surprise at the growth that was  
2 evident since the job was just completed two weeks ago.  
3 He saw that even new sprouts were emerging from the  
4 stumps. He also showed trees that had ribbons on them as  
5 ready for removal, but the person he selected said he was  
6 busy with almond tree removal and might not get to it this  
7 year. What is happening is backyard gardening. The  
8 canopy is still solid, complete, and forest primeval.

9           The personnel at the Sutter Yard wants to work  
10 with the CVFPB and wants us to weigh in on our goals for  
11 that area. So I need some direction, please, from you  
12 people.

13           Just north of the Old Grove, which is very  
14 clearly -- it impedes the flowage easements, there's  
15 private land. The sandbar willows -- and I wanted you  
16 people to hear this -- were so thick their machines could  
17 not go through. DWR is helping them, as their planted  
18 trees -- and in this document Fish and Wildlife cites  
19 planted trees in the floodway, in the bypass -- they're so  
20 thick. So they've grown perpendicular to the levee out  
21 into the channel and blocking the flowage easements of the  
22 water.

23           Mike Peters stated that had sandbar willows been  
24 in the undergrowth area of the Old Grove which he had  
25 cleared, he could not have gotten any work done.

1           DWR is to be commended but much more work needs  
2 to be done. And I would like to agendize this for our  
3 next meeting.

4           I also have a copy of a letter from an attorney  
5 that states:

6           "When the refuge claims authority under federal  
7 law to carry out their function, they cannot escape the  
8 effect of a property right to which they took subject and  
9 which was not distinguished by their acquisition. It is  
10 essential that this priority for flood control purposes be  
11 confirmed in writing with the refuge to facilitate DWR'S  
12 crew in requiring such modifications as may be needed to  
13 avoid any adverse impact on the capacity."

14           And I gave you people on the Board a copy of a  
15 tour of the Sutter Bypass. And we have not been able to  
16 get a hydraulic analysis. It will be one year in October  
17 since we were told it was done. And we did some hand  
18 staking after a high water event, and it showed where the  
19 Old Grove was that the water backs up because of the Old  
20 Grove. So I think that we're going to need to do  
21 something.

22           I've got pictures of the groves out into the  
23 channel. They're quite large, as you can see.

24           So it is something that really concerns me. We  
25 saw a bypass yesterday that Mike Hardesty and David, our

1 guide, said the first job it had was to convey flowage  
2 waters. And this is not happening up in the Sutter  
3 Bypass. They're managing for wildlife. And yet in this  
4 book, it states several times that the whole purpose of  
5 that bypass acquisition by Fish and Wildlife was for the  
6 use of migratory birds. There was so much stuff in there  
7 that the migratory birds couldn't even land, in comparison  
8 to this wildlife area out here.

9           They said the yellow-billed cuckoo was there.  
10 There's still a billion trees along the edges. So there's  
11 plenty of room for the yellow-billed cuckoo.

12           And then they were worried about the giant garter  
13 snake. Well, the giant garter snake is there and he's  
14 going to get up on the levees when the high water comes.  
15 And then they've got to get out because the giant garter  
16 snakes got to get together October 15th. So we can't do  
17 any work out there after October 15th.

18           So I would like to agendize this for our next  
19 meeting.

20           BOARD MEMBER RIE: Who's supposed to do the  
21 hydraulic analysis?

22           SECRETARY DOHERTY: Well, it was supposed to have  
23 been -- being done here.

24           BOARD MEMBER RIE: DWR?

25           SECRETARY DOHERTY: Yes. And then I wanted the

1 review. So we called for it but we never did get it. And  
2 so they keep saying it's done. And now they did say the  
3 other day, "Well, we're trying to get a hydraulic analysis  
4 done."

5 So that's my report. A nasty letter to follow.

6 PRESIDENT CARTER: Teri?

7 BOARD MEMBER RIE: (Ms. Rie shakes head.)

8 PRESIDENT CARTER: Nothing to share?

9 BOARD MEMBER RIE: The Corps has issued a new  
10 draft 408 policy, and that's currently under review.  
11 Eric, Jay, Butch, myself, we're all reviewing that. And  
12 hopefully one of us has some comments, because it's a  
13 pretty significant policy change. And the Corps is asking  
14 for a lot of information from the applicants to make any  
15 modifications or improvements to the levees.

16 Do you want to add anything, Jay?

17 EXECUTIVE OFFICER PUNIA: Rod Mayer has been  
18 designated as a state person who will compile the comments  
19 and provide the comments back to the Corps. So we'll work  
20 with Rod to include our comments. So Rod is taking the  
21 lead on this.

22 And as Board Member Teri Rie mentioned, the  
23 requirements are substantial. It has the potential of  
24 delaying the project. And we need to convey our concerns  
25 and comments to the Corps.

1           PRESIDENT CARTER: Butch?

2           VICE-PRESIDENT HODGKINS: Yeah, I'd like to add  
3 just a little bit more to the 408. I mean in effect what  
4 the Corps is doing is promulgating I guess it's additional  
5 guidance, where the projects that are being done here by  
6 either DWR or a local sponsor are in effect going to have  
7 to comply completely with Corps guidelines in terms of the  
8 analysis that's conducted pretty much the same as the  
9 Corps feasibility study.

10           We'll see where we go with our comments. But I'm  
11 not particularly optimistic that it's going to get any  
12 easier, because we seemed to be making progress and then  
13 this came out, and -- I mean we're making progress and  
14 we're getting them to write down what it is they want  
15 done. But what they want done is really going to slow  
16 down the process. So I'm not real optimistic.

17           I guess the other thing that I need to comment on  
18 is -- you remember at the last meeting I told you about  
19 the lower bypass forum that's being kicked off, and that  
20 is moving forward, where there are lots of proposals --  
21 and this came up yesterday in our conversation with Mike  
22 Hardesty at Yolo Basin Wildlands -- lots of mitigation  
23 proposals to help with water transfer and water capacity  
24 in the bottom end of the bypass. In connection with that,  
25 at least my involvement has terminated. And I presume

1 other Board members as well now are in a tough position to  
2 go to any of the meetings of that forum, because there is  
3 an application from Wildlands that is one of the  
4 applications that that process would have been looking at.  
5 So it now becomes potentially ex parte.

6 Is that true if you just go and listen or --

7 LEGAL COUNSEL CAHILL: Yes. If it relates to an  
8 application that's pending, it's ex parte to hear it.

9 VICE-PRESIDENT HODGKINS: Okay.

10 EXECUTIVE OFFICER PUNIA: But, you know, if there  
11 are other parts of the meeting that aren't, you know, you  
12 could go to most of the meeting and leave the room when  
13 it's Wildlands. I mean there may be ways. But if it's so  
14 integrated with everything they're talking about, then you  
15 don't want to be doing it.

16 VICE-PRESIDENT HODGKINS: But that's it

17 BOARD MEMBER RIE: There was one thing I forgot  
18 to mention.

19 The 408 task force is also working on an MOU with  
20 the Corps and DWR to streamline the 408 process. And I  
21 believe that was on the agenda last month. And at our  
22 last task force meeting, the Corps pretty much took it off  
23 the table for a while. They have some issues they need to  
24 work out amongst themselves.

25 So I don't know when that's going to come back

1 up. Do you have any idea?

2 VICE-PRESIDENT HODGKINS: No. I think with the  
3 Washington guidance, the MOU now slides to the back of the  
4 line and the focus becomes trying to work with the  
5 guidance.

6 PRESIDENT CARTER: Emma.

7 BOARD MEMBER SUAREZ: Quick update on the work on  
8 revising our regulations. We should be getting next month  
9 a summary presented to us of the public comments received  
10 when ? Meads and Don Flor and a couple of other people met  
11 with members of the public to talk about the type of  
12 things that we'd like to see if we went ahead and started  
13 updating our regulations.

14 So we should see a presentation on that by next  
15 month, President Carter. So I would make a note perhaps  
16 for the agenda.

17 In terms of actual proposed language at least in  
18 the first tier of regulatory changes, which are those as  
19 we have discussed in the past dealt with requirements  
20 under the new legislation or any new legal requirement  
21 that we might have, we might be able to see some language  
22 by September -- I'm sorry -- by October. But certainly by  
23 next month I believe we'll be seeing a presentation on the  
24 type of comments received.

25 PRESIDENT CARTER: Okay. As far as I'm

1 concerned, I wanted to inform the Board that I was  
2 contacted by an applicant, Mr. Al Montna, regarding Permit  
3 No. 18364 which is before the Board. He was frustrated  
4 with the lack of progress on reviewing the permit and  
5 bringing the permit before the Board.

6 And at that time I told him that he had a permit  
7 before the Board and I couldn't really discuss it with him  
8 because of the ex parte requirements. I did tell him that  
9 I would follow up with the Board and -- or Board staff,  
10 which I did. And I then subsequently called him back,  
11 left a message because he did not answer the phone, and  
12 said that I had followed up with Board staff; if he had  
13 any questions with regard to the permit, he needed to get  
14 in contact with Mr. Punia, and the staff would make every  
15 effort to address his concerns.

16 So I just wanted to disclose that potential ex  
17 parte communication.

18 I two weeks ago made a presentation to a group of  
19 approximately 16 Washington DC staff folks as a part of  
20 the California Agricultural Leadership/Washington DC  
21 Exchange Program, where they bring staffers out to  
22 California and take them on a tour of selected regions of  
23 California, with a focus on agricultural issues. These  
24 staffers are from the Department of -- the USDA,  
25 Department of Interior, EPA. Some of them are legislative



1 staffers. But, in essence, I made a presentation to them  
2 on the flood control system and the river as a resource up  
3 in RD 108.

4 Butch and I have had a couple meetings as part of  
5 the Executive Committee with DWR. The topics discussed  
6 there are the MOA obviously and -- let's see. Forgive me.

7 We talked about the California Levee Roundtable  
8 and what DWR's perspective and our perspectives were in  
9 terms of the future of that. That roundtable will be  
10 meeting again on the 22nd, which is I believe a week from  
11 now, here in this building. And it's expected that the  
12 framework that the roundtable has been working on for the  
13 last year - it will be a year the end of August - will be  
14 completed and hopefully agreed upon by all members of the  
15 roundtable, at which time in September we hope to bring  
16 that to the Board for adoption by the Board. And also we  
17 will invite all the participants of the roundtable to  
18 address the Board, hopefully relate their support. And  
19 there will be hopefully an official press release and  
20 communique signed or endorsed by all the representative  
21 agencies on the framework.

22 I'm supposed to be meeting with the Corps's  
23 headquarter leadership on the 25th. There will be at  
24 least one meeting, perhaps two meetings. And the Corps  
25 leadership will be General Riley, Steve Stockton, General

1 McMahon from the Division, and possibly the Assistant  
2 Secretary Woodley.

3           So these issues like 408, we'd like -- I think  
4 we'd like to ask some of the questions and press a little  
5 bit on where the headquarters is with regard to 408. They  
6 have a true interest in moving on with the levee  
7 vegetation.

8           And so hopefully we'll get agreement within the  
9 roundtable on that Friday, and the following Monday we'll  
10 have this meeting with the Corps and they'll be able to  
11 buy-off on the framework as well.

12           BOARD MEMBER RIE: Is it just you meeting with  
13 them on the 25th?

14           PRESIDENT CARTER: It's probably -- it's going to  
15 be myself and one other Board member and probably Jay.

16           BOARD MEMBER RIE: Anybody --

17           PRESIDENT CARTER: And we're meeting in Napa when  
18 they're coming out for the NAFSMA conference.

19           BOARD MEMBER RIE: Anybody from DWR?

20           PRESIDENT CARTER: Probably Dave Gutierrez and  
21 maybe Rod Mayer as well.

22           BOARD MEMBER RIE: Okay.

23           PRESIDENT CARTER: So we're having this meeting.  
24 I've made the request to -- since they were out here in  
25 California, to meet with them. And so we're responsible

1 for pulling together the agenda. For one of the meetings  
2 they have requested a specific meeting with regard to the  
3 levee roundtable on the morning of the 25th. And then --  
4 and we're kind of scheduling this around their  
5 presentations and the conference. So it looks like it's  
6 going to be a morning meeting and an evening meeting in  
7 Napa.

8 So that's all I have.

9 BOARD MEMBER BROWN: Any progress made on our  
10 budget and the necessity of Board members filling out time  
11 cards and such?

12 PRESIDENT CARTER: No new information on that.  
13 Our budget is -- there have been no changes. It's still  
14 part of the budget that's under consideration, and I don't  
15 believe there have been any amendments or changes to that.  
16 It's just a question of when it's -- if and when it's  
17 adopted and signed.

18 And with regard to the time cards, I haven't  
19 pressed that yet.

20 SECRETARY DOHERTY: Is everybody turning in time  
21 cards?

22 BOARD MEMBER RIE: No.

23 Is it okay to give you some input for your  
24 meeting now?

25 PRESIDENT CARTER: Yeah.

1           BOARD MEMBER RIE: Just briefly, I think the  
2 message to the Corps leadership needs to be that we're  
3 really interested in streamlining the 408 process. And  
4 they've been working with us and we've had several  
5 meetings. But the process is becoming such a burden and  
6 it's becoming so difficult and the requirements are so  
7 onerous, that the only way I can see this improve is -- we  
8 have a clear list. But it's going to take so much time  
9 and it's going to delay the projects. And we're kind of  
10 hoping that it would get simpler and easier so we can move  
11 projects forward. And simple projects such as slurry  
12 walls, which you have to prepare an EIS potentially and  
13 risk analysis so that we can protect the public behind the  
14 levees where we know we have deficiencies, it seems to me  
15 we're going to spend more time and more money documenting  
16 everything on the Corps's list and we may not get to the  
17 point where we can actually complete the projects.

18           So the gist of it is we really need to simplify  
19 the process wherever we can. When we have setback levees,  
20 it makes total sense to have an EIS and do a risk analysis  
21 and have a very rigorous process. But simple projects  
22 such as slurry walls and seepage berms, it doesn't make  
23 any sense.

24           PRESIDENT CARTER: Okay. It would help me, if  
25 you have time, just to send that information to me in an

1 Email, and I can compile it a little easier.

2 BOARD MEMBER RIE: Sure.

3 PRESIDENT CARTER: And you probably are much more  
4 articulate than I am, so I can use some of your words when  
5 I relate it to them.

6 BOARD MEMBER RIE: I just wanted to get it on the  
7 public record, so --

8 PRESIDENT CARTER: Okay. Great.

9 BOARD MEMBER RIE: -- it's not an ex parte  
10 communication.

11 PRESIDENT CARTER: So, if there's nothing else on  
12 Board comments or task leader reports, we'll move on to  
13 Item 16, Report of the Activities of the Executive  
14 Officer.

15 EXECUTIVE OFFICER PUNIA: Considering this time,  
16 I'll be real brief. And if Board desires more detail,  
17 please let me know. A lot of topics on my list have  
18 already been covered.

19 On Jacobs Lane -- George is still here -- I want  
20 to commend George's staff, Eric Koch and Annalena Bronson,  
21 and Nancy Finch and working with Ginny Cahill, to put this  
22 project together and getting approval from the Board  
23 today. It was very important to the Corps and  
24 particularly to Colonel Tom Chapman to get this approval.  
25 Otherwise there was a possibility they may have lost the

1 federal funding for this project.

2 So I just want to, for the sake of record,  
3 commend the DWR staff's effort on this.

4 SB 1360, as I'm sure some of you are already  
5 aware, there's a possibility that the Governor may veto  
6 this bill due to the termination clause for the existing  
7 Board members.

8 We had a meeting with RD 17 --

9 BOARD MEMBER BROWN: What gives you that idea?

10 EXECUTIVE OFFICER PUNIA: Pardon?

11 BOARD MEMBER BROWN: What makes you think that?

12 EXECUTIVE OFFICER PUNIA: We got the information  
13 from Alf Brandt that there's an indication at the  
14 Governor's Office that there's a possibility of veto.  
15 That's the extent of my information. Ginny may have  
16 additional information.

17 Ginny.

18 LEGAL COUNSEL CAHILL: No, that's correct. It  
19 was an Email from Alf.

20 EXECUTIVE OFFICER PUNIA: And RD 17, Gary  
21 coordinated a meeting with the RD 17 staff, Dante  
22 Nomellini, their attorney; and Chris Neudeck. And Gary  
23 also invited DWR EIP levee evaluation, so that we're all  
24 on the same page on this project. There's a great push  
25 from the RD 17 to have a construction this year.

1           So the conclusion of the meeting was that they  
2 will resubmit a smaller project application this year,  
3 much smaller scale, which they are trying to implement  
4 with their own funding. But there are still a lot of  
5 issues, the federal approval, the 408, 104, and CEQA  
6 compliance. But they're pushing it. We'll try to  
7 accommodate their requests, but it may or may not happen.

8           Board members salary update. The Governor's  
9 Office has approved the proposal. It has gone to the  
10 Department of Personnel Administration. And they will  
11 send the notification to DWR and the State Controller's  
12 Office. I haven't seen that. We will follow it with the  
13 Department of Personnel Administration and keep you  
14 informed.

15           I want to commend the efforts of Lorraine and  
16 Geoff. We have finally the map of Sacramento/San Joaquin  
17 Drainage District ready. And they are working with the  
18 GIS person to have it on the web very soon. It was a  
19 major undertaking because it was never -- the map was  
20 never prepared. Our staff from the DOE took the language  
21 from the 1911 when the Board was established and then  
22 tried to draw that map from that language with the map,  
23 which is a georeferenced.

24           State's budget impasse impacts. We have to let  
25 our retired annuitant, Jill Phinney, for a couple days.

1 But later on we realized that we are exempt from the  
2 requirements to let our retired annuitant and students --  
3 not allowing them to work. So we were able to call her  
4 back, and she's back in business.

5 Dan and Debbie Smith will brief you on the  
6 Cortopassi lawsuit. So they are working almost -- Dan  
7 working full time and supporting Deborah Smith.

8 We had yesterday a tour. There's quite a few  
9 lessons to be learned. That I think I will propose not to  
10 have the tours during July and August, if possible.

11 (Laughter.)

12 EXECUTIVE OFFICER PUNIA: And I think if you  
13 failed to connect with Board Member Emma Suarez. And we  
14 will revisit our protocols and see how we can improve so  
15 that that doesn't happen again.

16 BOARD MEMBER RIE: May I suggest a map.

17 EXECUTIVE OFFICER PUNIA: Yes, we will.

18 BOARD MEMBER RIE: Thank you.

19 SECRETARY DOHERTY: There was a map.

20 BOARD MEMBER RIE: Not for the first two tour  
21 sites. Just for Sacramento.

22 PRESIDENT CARTER: There was a map on where to  
23 meet, at 102 and Cache Creek. I printed it off.

24 EXECUTIVE OFFICER PUNIA: It was sent at the last  
25 minute. Maybe some of the Board members haven't had the



1 chance to get it. We'll revisit our procedures and  
2 policies.

3           The three contracts or agreements we are working  
4 on still -- contracting procedures are long and lengthy --  
5 with Dr. Rechmeyer and to hire Mr. Patrick Bell, and even  
6 the interagency agreement to continue service for our  
7 legal counsel, they're still in the works. We are not  
8 able to finish these.

9           Dan Fua will represent at the Building Code  
10 Committee. I think we discussed already that.

11           And next month the Board -- we discussed last  
12 month that we will tour the TRLIA project under  
13 construction. So that's tentatively planned.

14           That's what I have on my list. If you have any  
15 questions, I will be glad to answer.

16           BOARD MEMBER RIE: Question. DWR is making a  
17 presentation and holding a workshop on September 2nd from  
18 1 to 5 p.m. at the Paradise Point Hotel in San Diego. I  
19 was just wondering if the Board was going to participate  
20 in that, because they're going to go over the Central  
21 Valley Flood Plan at that meeting and ask for input from  
22 the public.

23           EXECUTIVE OFFICER PUNIA: I think so far Board  
24 Member Butch Hodgkins requested and planning to attend  
25 from the Board side.

1 VICE-PRESIDENT HODGKINS: And I think that's true  
2 because --

3 BOARD MEMBER RIE: That particular workshop?

4 VICE-PRESIDENT HODGKINS: Well, that's one of --  
5 I didn't see that one. I saw one where they're doing a  
6 workshop on integrated flood management.

7 SECRETARY DOHERTY: That is one day and one's the  
8 next.

9 VICE-PRESIDENT HODGKINS: Okay. But that's one  
10 of the reasons I'd like to go, is to go to those workshops  
11 and find out what's being said.

12 EXECUTIVE OFFICER PUNIA: We have the  
13 information. I think we may discuss at a staff meeting  
14 and see if others are interested in participating.

15 BOARD MEMBER RIE: Yeah, I think it's important  
16 that the Board have representation, because they will be  
17 getting input on the Central Valley Flood Plan, and I  
18 think it would be beneficial for either the Board staff or  
19 Board members to participate and hear comments on that.  
20 And it's free. And I don't think it's part of the  
21 Floodplain Managers' Conference. It's a separate workshop  
22 and it's free.

23 PRESIDENT CARTER: Are you interested in going?

24 BOARD MEMBER RIE: No.

25 PRESIDENT CARTER: Anybody else interested in

1 going besides Butch?

2 SENIOR ENGINEER BUTLER: What day is it?

3 BOARD MEMBER RIE: It's September 2nd from 1 to  
4 5.

5 EXECUTIVE OFFICER PUNIA: And, Eric, Lorraine has  
6 the information and we'll discuss it at a staff meeting.

7 PRESIDENT CARTER: Okay. Any other questions for  
8 Mr. Punia?

9 All right. We'll move on to Future Agenda, Item  
10 17.

11 We have distributed today -- there was a copy of  
12 a proposed future agenda. Front page is essentially the  
13 same as today through Item 6. There's a Three Rivers  
14 Levee Improvement Authority monthly report.

15 We did -- as Jay mentioned, on the 18th, the day  
16 before, which would be the Thursday, there's a tour of the  
17 TRLIA setback levee construction site. And if there's  
18 anything else up there that Board members want to see as  
19 part of that project, maybe -- I mean they're doing some  
20 work on the Yuba.

21 BOARD MEMBER BROWN: What's the date?

22 PRESIDENT CARTER: September 18th.

23 SECRETARY DOHERTY: We can meet up there, can't  
24 we? I don't have to drive down here and drive back?

25 EXECUTIVE OFFICER PUNIA: They'll make

1 arrangements so that you can meet us there.

2 BOARD MEMBER BROWN: I'll be gone for that whole  
3 week, Mr. Chairman.

4 PRESIDENT CARTER: Okay. So please let staff  
5 know if there's something in particular that you'd like to  
6 see while you're up there, other than the setback levee  
7 construction site. You know, they're doing work on the  
8 Yuba River and at Simpson Lane.

9 And then there's the consent calendar. And then  
10 there are currently scheduled -- we got an amendment.  
11 There's four hearings schedule. The draft agenda had  
12 five. I believe that we're down to four now. Is that the  
13 recommendation of staff?

14 No?

15 What is the recommendation of staff?

16 BOARD MEMBER RIE: Is the RD 17 permit on here?

17 PRESIDENT CARTER: Yes, that's Item A. That's  
18 Permit No. 18360.

19 Permit 18364 is on.

20 Permit 18399 is on, which were B, C and D in the  
21 draft agenda.

22 And then there was Permit No. 18400, which was  
23 not.

24 And this Donald Murphy and 18406 were not on this  
25 revised schedule that I got today.

1 BOARD MEMBER RIE: Which one is RD 17?

2 EXECUTIVE OFFICER PUNIA: I think it's -- Ben is  
3 referencing to an addendum given today. So it's not on  
4 this. That's a separate sheet Lorraine handed to all of  
5 us.

6 BOARD MEMBER RIE: Okay. It's on the agenda?

7 PRESIDENT CARTER: RD 17 is the Item B on that  
8 one. 18360.

9 BOARD MEMBER RIE: Okay. I believe you.

10 That particular permit I think is important for  
11 us to put it on the agenda and talk about it, because they  
12 do have deficiencies with those levees, and I believe  
13 they're running out of time to make any sort of  
14 improvements or repairs.

15 PRESIDENT CARTER: Okay. Then beyond the  
16 hearings we have requested actions of a cooperation  
17 agreement between Three Rivers and the Board and Yuba  
18 county and Reclamation District 784 for Segment 2 of the  
19 Feather River setback levee.

20 There's Board discussion of necessary parties for  
21 cooperation agreement.

22 LEGAL COUNSEL CAHILL: Yes. These are related.  
23 In fact, the second one would come before the first. It's  
24 an issue Butch has raised in the past about determining  
25 when you have a joint powers authority, such as SAFCA or

1 West SAFCA or TRLIA, when we need just the JPA to sign  
2 insurance agreements and when we should have individual  
3 members sign.

4 But before he left, Scott Shapiro passed me a  
5 note that said he's going to be out of town in September.  
6 Since he represents many of these entities, he asked that  
7 we could put this over till October. And he said that  
8 would work for TRLIA as well, because originally we needed  
9 to do it before they started their tie-ins. But now that  
10 the Corps EIS schedule has slipped, it wouldn't matter to  
11 them if you put it to October.

12 PRESIDENT CARTER: So we want to take 9 --

13 LEGAL COUNSEL CAHILL: Take 9 and 10 and move  
14 them --

15 PRESIDENT CARTER: So 9 and 10 are off.

16 LEGAL COUNSEL CAHILL: -- move them out a month.

17 PRESIDENT CARTER: Okay.

18 BOARD MEMBER BROWN: What about the tour? Does  
19 that make any difference?

20 LEGAL COUNSEL CAHILL: No, apparently not. I  
21 mean he doesn't need to be there I guess for the tour.  
22 But he wanted to be there for both of these items and  
23 can't be.

24 PRESIDENT CARTER: Well, we'll have the Board/DWR  
25 MOA back on the agenda hopefully.

1 EXECUTIVE OFFICER PUNIA: Yes.

2 PRESIDENT CARTER: And then we have informational  
3 briefings:

4 Delta Levee Subventions Program.

5 Report from SAFCA on the Floodway Vegetation  
6 Management Plan for the lower American River.

7 Changes to Title 23 regulations. Now, is that  
8 going to be just the comments or will we have -- Emma's  
9 gone. Maybe Debbie knows.

10 Item 14, Changes to Title 23 regulations. Are we  
11 going to be entertaining changes or are we going to be  
12 talking about the comments received as part of the public  
13 session?

14 MS. SMITH: Next month we'll be bringing back a  
15 summary of the comments that came out in the stakeholder  
16 meeting.

17 PRESIDENT CARTER: Okay. For the record, Debbie,  
18 could you just introduce yourself.

19 MS. SMITH: Oh, sure. Debbie Smith with the  
20 Attorney General's Office.

21 PRESIDENT CARTER: All right. So we'll be doing  
22 that.

23 We had a request for an informational briefing on  
24 the Sutter Bypass situation.

25 SECRETARY DOHERTY: I'd like some action from us.

1           PRESIDENT CARTER: You want this to be an action  
2 item -- requested action.

3           BOARD MEMBER RIE: It seems like we talk about  
4 the Sutter Bypass at least once a year. And we just talk  
5 about it.

6           SECRETARY DOHERTY: Yes, that's why I want some  
7 action.

8           (Laughter.)

9           PRESIDENT CARTER: Okay.

10          BOARD MEMBER BROWN: Jay, can we put the Madera  
11 thing on the agenda? Oh, I won't be here. But do you  
12 want to --

13          PRESIDENT CARTER: For October?

14          BOARD MEMBER BROWN: Yeah, October would be  
15 better.

16          PRESIDENT CARTER: So that's future agenda.

17          Any other things that people would like to add I  
18 missed?

19          Okay. Well, we'll go ahead with that.

20          At this time we now are going to -- we're going  
21 to move into closed session.

22          Mr. Punia.

23          EXECUTIVE OFFICER PUNIA: One more item I want to  
24 mention that tentatively, that we will bring the framework  
25 document to the Board for a briefing and for our Board's



1 information.

2 PRESIDENT CARTER: Right. I forget about that.

3 Okay.

4 BOARD MEMBER BROWN: Can we have two minutes  
5 before we go into closed session?

6 BOARD MEMBER RIE: Which framework document?

7 PRESIDENT CARTER: It's their roundtable -- levee  
8 roundtable.

9 EXECUTIVE OFFICER PUNIA: Vegetation framework  
10 document.

11 BOARD MEMBER RIE: Okay.

12 PRESIDENT CARTER: Okay. So, yes, we're going to  
13 take a five-minute recess. And we'll clear the room and  
14 then go into closed session as agendized under Item 18.

15 Okay. Thank you.

16 (Thereupon a recess was taken.)

17 (Thereupon the meeting recessed

18 Into closed session.)

19 PRESIDENT CARTER: And we will reopen the open  
20 session. And just for the record, let the record reflect  
21 that the Board did enter into closed session as agendized  
22 for today and discussed litigation as agendized and there  
23 were no decisions made.

24 And if there's nothing else, we are adjourned.

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(Thereupon the Central Valley Flood  
Protection Board open session meeting  
adjourned at 6:09 p.m.)

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## 1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand  
3 Reporter of the State of California, and Registered  
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the  
6 foregoing Central Valley Flood Protection Board open  
7 session meeting was reported in shorthand by me, James F.  
8 Peters, a Certified Shorthand Reporter of the State of  
9 California, and thereafter transcribed into typewriting.

10 I further certify that I am not of counsel or  
11 attorney for any of the parties to said meeting nor in any  
12 way interested in the outcome of said meeting.

13 IN WITNESS WHEREOF, I have hereunto set my hand  
14 this 29th day of August, 2008.

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22 JAMES F. PETERS, CSR, RPR  
23 Certified Shorthand Reporter  
24 License No. 10063  
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